



New South Wales

# Tow Truck Industry Amendment Regulation 2002

under the

Tow Truck Industry Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Tow Truck Industry Act 1998*.

CARL SCULLY, M.P.,

Minister for Transport

## Explanatory note

The object of this Regulation is to amend the *Tow Truck Industry Regulation 1999* to facilitate the implementation of the job allocation scheme for towing work carried out by tow trucks. The Regulation makes a number of minor adjustments to the manner in which the job allocation scheme will operate (eg orders published in the Gazette will specify the areas of the State in which such a scheme will operate as well as the respective start times for those areas). The kinds of towing work to which the job allocation scheme applies is also extended to limited access towing work (ie towing work carried out by authorised one-tonne tow trucks).

This Regulation also makes a number of amendments consequential on the enactment of the *Tow Truck Industry Amendment Act 1999*. These amendments include removing the prescribed fees for licences and drivers certificates (such fees are determined by the Tow Truck Authority).

This Regulation is made under the *Tow Truck Industry Act 1998*, including sections 46 (which relates to the administration and operation of the job allocation scheme) and 105 (the general power to make regulations).

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**Tow Truck Industry Amendment Regulation 2002**

**1 Name of Regulation**

This Regulation is the *Tow Truck Industry Amendment Regulation 2002*.

**2 Commencement**

This Regulation commences on 1 June 2002.

**3 Amendment of Tow Truck Industry Regulation 1999**

The *Tow Truck Industry Regulation 1999* is amended as set out in Schedule 1.

## Schedule 1 Amendments

(Clause 3)

**[1] Clause 3 Definitions**

Omit the definition of *job allocation scheme start time* from clause 3 (1).

**[2] Clause 5 Particulars to be included in licence applications: section 17 (2) (g)**

Omit clause 5 (e).

**[3] Clause 5 (i)**

Omit “or is eligible to obtain”.

**[4] Clause 6**

Omit the clause. Insert instead:

**6 Application for licence: section 17 (2) (h)**

- (1) In this clause, *licence application fee* means the fee referred to in section 17 (2) (h) of the Act.
- (2) The TTA may refuse to determine an application for a licence until the licence application fee is paid.
- (3) If the application is made in respect of a business carried on in partnership, a single licence application fee is payable.
- (4) A licence application fee is non-refundable.

**[5] Clause 7 Offence that disqualify applicants for licences: section 18 (2) (b) and (3) (i)**

Omit clause 7 (2).

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**[6] Clause 11**

Omit the clause. Insert instead:

**11 Payment of licence fee: section 21**

- (1) In this clause, *licence fee* means the fee referred to in section 21 of the Act.
- (2) The TTA may refuse to grant a licence until the licence fee is paid.
- (3) If the licence is granted in respect of a business carried on in partnership, a single licence fee is payable.

**[7] Clause 13 Particulars to be included in drivers certificate applications: section 25 (2) (b)**

Omit “2 written references” from clause 13 (c).

Insert instead “in the case of an applicant who has not previously held a drivers certificate under the Act or whose drivers certificate has lapsed or been revoked—2 written references”.

**[8] Clause 13 (c) (xi)**

Insert “current or” before “previous”.

**[9] Clause 13 (2)**

Insert at the end of clause 13:

- (2) For the purposes of subclause (1) (c), a drivers certificate is taken to have lapsed if the holder of the certificate did not make an application for a subsequent drivers certificate in accordance with the Act on or before the date on which the drivers certificate ceased to be in force.

**[10] Clause 14**

Omit the clause. Insert instead:

**14 Application for drivers certificate: section 25 (2) (c)**

- (1) In this clause, *drivers certificate application fee* means the fee referred to in section 25 (2) (c) of the Act.

- (2) The TTA may refuse to determine an application for a drivers certificate until the drivers certificate application fee is paid.
- (3) A drivers certificate application fee is non-refundable.

**[11] Clause 15 Offences that disqualify applicants for drivers certificates: section 26 (2) (b)**

Omit clause 15 (2).

**[12] Clause 17**

Omit the clause. Insert instead:

**17 Additional grounds for refusing application for drivers certificate: section 26 (4)**

- (1) For the purposes of section 26 (4) of the Act, the grounds on which an application for a drivers certificate must be refused include any case in which:
  - (a) the applicant has been disqualified from holding a driver licence, or
  - (b) the applicant's driver licence has been suspended or cancelled (other than for fine default under the *Fines Act 1996*),  
on more than one occasion during the period of 3 years before the application for the driver certificate was made.
- (2) For the purposes of subclause (1), the 3-year period in respect of which the applicant must be refused a drivers certificate commences on the last day of the applicant's most recent period of disqualification or period of driver licence suspension or cancellation.

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**[13] Clause 20**

Omit the clause. Insert instead:

**20 Payment of drivers certificate fee: section 30**

The TTA may refuse to grant a drivers certificate until the fee referred to in section 30 of the Act is paid.

**[14] Clause 22A**

Insert after clause 22:

**22A Pending application for subsequent licence or drivers certificate**

If:

- (a) a person who is the holder of a licence or drivers certificate (*the current licence or drivers certificate*) applies for a subsequent licence or drivers certificate before the term of the current licence or drivers certificate expires, and
- (b) the person has paid the relevant application fee for the subsequent licence or drivers certificate, and
- (c) the application has not been dealt with by the time the current licence or drivers certificate expires,

the authority conferred by the current licence or drivers certificate continues until such time as the person is notified of the granting or refusal of the subsequent licence or drivers certificate.

**[15] Parts 3 and 4**

Omit the Parts. Insert instead:

**Part 3 Job allocation scheme****Division 1 Preliminary****23 Definitions**

In this Part:

***accident*** means any collision, impact or other event (however caused) resulting in damage to a motor vehicle.

***accident scene*** means an area proximate to the point where a motor vehicle involved in an accident has, as an immediate result of the accident, come or been brought to a stationary position.

***accident towing work*** means the towing by a tow truck of a motor vehicle from an accident scene, and includes any salvage or recovery work carried out by a tow truck at the accident scene in relation to the motor vehicle.

***ambulance breakdown towing work*** means the towing by a tow truck of an ambulance that has broken down.

***area*** means an area of the State specified in a JAS order.

***call centre*** means the person or body authorised by the TTA to administer and operate a JAS.

***JAS*** means a job allocation scheme established for an area by an order under clause 25.

***JAS order*** means an order under clause 25.

***JAS start time*** for an area means the time, as specified in a JAS order, when the JAS starts to operate in the area.

***job allocation zone*** means a job allocation zone as described in clause 26 (1).

***limited access towing work*** means towing work that is required to be carried out by a one-tonne tow truck to which clause 67 (2) applies.

***obstruction towing work*** means the towing by a tow truck of a motor vehicle that is standing illegally or is causing an obstruction to traffic (being towing work that is carried out in accordance with section 75 or 76 of the *Road Transport (Safety and Traffic Management) Act 1999*).

***police towing work*** means any towing work by a tow truck that is arranged by the Police Service:

- (a) for towing a motor vehicle that is required by the Police Service to be examined for forensic purposes, or
- (b) for towing a motor vehicle that, in the opinion of a police officer, is causing an unreasonable obstruction to traffic (but only to the extent that it is necessary to tow the vehicle so that it is no longer causing the obstruction).

***relevant roster*** means the roster for the job allocation zone in which a motor vehicle that is to be towed is located.

***roster*** means the rotating roster maintained by the call centre in relation to each job allocation zone for the purpose of allocating towing work.

***slot*** means a position on a roster.

***towing authorisation book*** means a book, comprising approved towing authorisation forms, issued by the TTA.

## **Division 2 Administration and operation of JAS**

**Note.** The Act (and therefore a JAS under this Part) does not apply to tow trucks operated by the Crown or a statutory body representing the Crown, but it does apply to persons who carry out tow truck operations under a contract or arrangement made or entered into with the Crown or a statutory body representing the Crown. (See section 6 of the Act.)

### **24 Towing work to which JAS applies**

- (1) A JAS applies to the following kinds of towing work:
  - (a) accident towing work,
  - (b) ambulance breakdown towing work,
  - (c) limited access towing work,
  - (d) obstruction towing work,
  - (e) police towing work.



- (2) The kinds of towing work to which a JAS applies in relation to a particular area may be modified or varied by a JAS order.

**Note.** For example, a JAS order may provide that “heavy” towing work is excluded from the operation of the JAS for a particular area even though it might be classed as accident towing work.

- (3) In addition to the towing work to which a JAS applies, the call centre may, if notified by the owner or driver of a motor vehicle that the vehicle has broken down and requires towing, allocate the towing work in accordance with the JAS.

## 25 JAS order

The Minister may, by order published in the Gazette, specify:

- (a) the area to which the order applies, and
- (b) the JAS start time for the area, and
- (c) the period for which a JAS is to operate in the area, and
- (d) the particular kinds of towing work to which the JAS applies in the area.

**Note.** Section 43 (2) of the *Interpretation Act 1987* provides that if a regulation confers a power on any person to make an order, the power includes power to amend or repeal any order made in the exercise of that power.

## 26 Elements of JAS

- (1) A JAS comprises the following elements:
- (a) an area is to consist of such job allocation zones as are shown on a map prepared and published by the TTA from time to time,
  - (b) a rotating roster is to be maintained for each such job allocation zone and is to be operated on a continual basis,
  - (c) the call centre is to administer and manage the rosters,
  - (d) towing work to which the JAS applies is to be allocated according to the roster for the job allocation zone in which the motor vehicle that is to be towed is located,
  - (e) each roster is to have a number of slots,

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- (f) a participant may be assigned, by the call centre or the TTA, a slot (or slots) on the roster (or rosters) for which the participant has applied.

**Note.** Section 46 (3) of the Act defines *participant*.

- (2) The maximum number of slots that a participant may be assigned is:
  - (a) 10, or
  - (b) the number of licensed tow trucks operated by the participant,whichever is the lesser.

#### 27 Operation of JAS

- (1) A JAS operates in the following manner:
  - (a) the call centre is notified that a motor vehicle requires towing by a tow truck,
  - (b) except as provided by subclause (2), the call centre allocates the towing work to the participant who has been assigned the slot that is, at the time of notification, at the top of the relevant roster,
  - (c) an identifying number is assigned to the allocated towing work (*the job allocation number*),
  - (d) the participant who has been allocated the towing work is responsible for the towing work being properly undertaken and completed.
- (2) In the following circumstances, the call centre is to allocate the towing work, in the order of priority under the relevant roster, to a participant who is identified on that roster as being able to carry out the towing work:
  - (a) if any ambulance towing work, limited access towing work or police towing work is to be carried out,
  - (b) if the owner or driver of the motor vehicle that needs to be towed informs the call centre, at the time when the call centre is notified that the vehicle needs to be towed, that the vehicle can only be towed by a particular type of tow truck because of the special make or type of the vehicle,

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- (c) if the call centre, having regard to the circumstances of the case, considers that a particular type of tow truck is required to carry out the towing work concerned.
  - (3) If there is no participant on the relevant roster who is identified as being able to carry out particular towing work, the call centre is to allocate the work, in the order of priority under the roster in an adjacent job allocation zone, to a participant who is identified on that roster as being able to carry out that towing work.
  - (4) The call centre may allocate any towing work that is unable to be carried out by participants in a particular job allocation zone to participants in an adjacent job allocation zone in the order of priority under the roster in that adjacent zone.

**Note.** An example of a situation in which the call centre will need to allocate towing work to participants outside the relevant job allocation zone is where there is an accident involving more vehicles than there are participants on the roster for the zone.

## 28 Application for participation in JAS

- (1) A licensee may apply to participate in a JAS by:
  - (a) lodging with the TTA an application in the approved form, and
  - (b) paying the application fee as determined by the TTA.
- (2) The TTA may determine periods between which licensees may apply to participate in a JAS. Any such period must not exceed 2 years.
- (3) A person must not, in respect of an application made under this clause, make any statement which the person knows to be false or misleading in a material particular.  
Maximum penalty: 25 penalty units.
- (4) The TTA may waive the application fee under subclause (1) (b) in such cases as it thinks fit.
- (5) The TTA may approve a licensee who has applied under this clause to participate in a JAS or may refuse the application.

**29 JAS number plates**

- (1) The TTA is to issue participants with distinctive number plates for tow trucks that are to be operated under a JAS.
- (2) A participant must not sell, or otherwise transfer, any JAS number plates to another person.

Maximum penalty (subclause (2)): 25 penalty units.

**30 Permanent withdrawal from JAS**

- (1) A participant may, with the approval of the TTA and in accordance with this clause, withdraw permanently from one or more slots in a JAS.
- (2) The participant must give the TTA at least 6 weeks (or such lesser period as may be approved) written notice in the approved form of the proposed withdrawal.
- (3) A licensee must, within 7 days of permanently withdrawing from all the licensee's slots in the JAS, return any JAS number plates issued by the TTA to the licensee.

Maximum penalty: 20 penalty units.

**31 Temporary withdrawal from JAS**

- (1) A participant may, with the approval of the TTA and in accordance with this clause, withdraw temporarily from one or more slots in a JAS at any time except during the following periods:
  - (a) the Christmas period (ie the period starting on Christmas Eve in each year and ending at midnight on 2 January of the following year),
  - (b) the Easter period (ie the period starting at 6 pm on the Wednesday before Good Friday in each year and ending at 6 pm on the Tuesday immediately following that Good Friday),
  - (c) any other period specified by the TTA by notice published in the Gazette.
- (2) Notice of the proposed withdrawal is to be given in the approved manner.

- (3) If approved by the TTA, a temporary withdrawal from a JAS is be for the period determined by the TTA.
- (4) The TTA may refuse to give its approval unless such fee as may be determined by the TTA has been paid to the TTA.

**32 Failure to carry out allocated tow**

- (1) A participant must ensure that any towing work that has been allocated to the participant is carried out within such time and manner as may be specified by the call centre.
- (2) If a participant fails to carry out more than 3 allocated tows within any such specified time or manner, the participant may be suspended by the TTA from participation in the JAS concerned for a period of up to one month.

**33 Failure to comply with direction of call centre relating to salvage or recovery work**

A participant who has been allocated towing work must comply with any direction given by the call centre relating to any part of the towing work that involves salvage or recovery work.

Maximum penalty: 20 penalty units.

**34 Multiple towing from accident scene**

- (1) A participant may tow more than one motor vehicle by use of a tow truck from the scene of an accident involving the motor vehicle only if:
  - (a) the participant has obtained a job allocation number and a towing authorisation in respect of each vehicle that the participant wishes to tow, and
  - (b) the tow truck to be used for the towing is capable of safely towing each of those vehicles.
- (2) A participant who tows more than one vehicle from the scene of an accident involving the motor vehicle must not charge, in respect of each vehicle towed, more than the amount determined by the TTA under section 54 of the Act.

**35 Failure to meet obligations under JAS constitutes grounds for taking disciplinary action**

For the purposes of section 42 (1) of the Act, the following are prescribed as reasons for taking disciplinary action against a participant under Division 4 of Part 3 of the Act:

- (a) failure by the participant to comply with the participant's obligations under a JAS,
- (b) repeated attempts by the participant to obtain the TTA's approval to temporarily withdraw from a JAS.

**36 Authorising or permitting unallocated towing work to be carried out**

A person must not, in respect of any towing work to which a JAS applies, authorise or permit the driver of a tow truck to carry out the towing work if the person knows that the driver has not been allocated the towing work in accordance with the JAS.

Maximum penalty: 50 penalty units.

**Division 3 Towing authorisations**

**37 Additional circumstances in which towing authorisation required (non-JAS accident towing work)**

- (1) In accordance with section 49 (4) of the Act, a person must not carry out, or attempt to carry out, any accident towing work (other than accident towing work to which a JAS applies) unless a towing authorisation has been obtained for the towing work.

Maximum penalty: 50 penalty units.

**Note.** Section 49 (1) of the Act provides that a person who is carrying out towing work allocated under a JAS is required to obtain a towing authorisation for the towing of the motor vehicle.

- (2) However, a person is not required to obtain a towing authorisation for any such accident towing work if:
  - (a) an authorised officer or police officer has indicated to the person that a towing authorisation is not required for the towing work, and

- (b) the towing is carried out in accordance with the directions of the authorised officer or police officer.

**38 Exception from requirement to obtain towing authorisation for JAS towing work: section 49 (2) (b)**

In accordance with section 49 (2) (b) of the Act, a person is not required to obtain a towing authorisation for any towing work to which a JAS applies if:

- (a) an authorised officer has indicated to the person that a towing authorisation is not required for the towing work, and
- (b) the towing is carried out in accordance with the directions of the authorised officer.

**Note.** Section 49 (2) (a) of the Act also provides that a person is not required to obtain a towing authorisation for JAS towing work in certain circumstances.

**39 Requirement to leave accident scene once towing authorisations obtained**

If, in relation to an accident involving one or more motor vehicles, a person or persons have obtained the required towing authorisations, any other person who has attended the scene of the accident for the purpose of obtaining towing work by the use of a tow truck (but who has not obtained a towing authorisation) must not remain at the scene of the accident.

Maximum penalty: 50 penalty units.

**40 Persons who may give towing authorisations**

A towing authorisation for the towing of a motor vehicle by a tow truck may only be given by:

- (a) the owner or driver of the motor vehicle to be towed, or
- (b) a police officer, or
- (c) an authorised officer.

**41 Completion of, and dealing with, towing authorisations**

(1) A towing authorisation must:

- (a) be in the approved form, and
- (b) be included in a towing authorisation book, and

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- (c) be signed by the person giving the authorisation and by the driver of the tow truck, and
  - (d) specify a place as the place to which the motor vehicle is to be towed, and
  - (e) otherwise be completed (to the extent that is reasonably practicable in the circumstances) by inserting the information required by the approved form.
- (2) Towing authorisation forms in a towing authorisation book must be used consecutively in order of serial number.
  - (3) In the case of a towing authorisation for towing work obtained in an area before the JAS start time for the area, the original towing authorisation and 2 copies must be completed.
  - (4) In the case of a towing authorisation obtained in an area after the JAS start time for the area, the original towing authorisation and 3 copies must be completed.

#### **42 False information in towing authorisations**

A person must not record anything in a towing authorisation that the person knows to be false or misleading.

Maximum penalty: 20 penalty units.

#### **43 Other requirements relating to towing authorisations**

- (1) A person who obtains a towing authorisation for the towing of a motor vehicle by a tow truck must:
  - (a) immediately provide a copy of the towing authorisation to the person giving the authorisation, and
  - (b) within 72 hours of completing the towing work to which the towing authorisation relates, deliver the original towing authorisation to the holder of the licence under which the tow truck is operated, and
  - (c) keep a copy of the towing authorisation in the towing authorisation book, and
  - (d) in the case of a towing authorisation for towing work to which a JAS applies—attach a copy of the towing authorisation in the approved manner to the motor vehicle to be towed.

Maximum penalty: 50 penalty units.



- (2) In the case of a towing authorisation for towing work other than towing work to which a JAS applies, the person who obtains the towing authorisation must, before towing the motor vehicle by a tow truck, complete and attach to the motor vehicle in the approved manner a notice (*the towing notice*) that is in the approved form and that contains the following information:
- (a) the serial number of the towing authorisation to which the towing notice relates,
  - (b) the name of the licensee and the number of the licence under which the tow truck is authorised to be operated,
  - (c) the name, and drivers certificate number, of the person who obtained the towing authorisation,
  - (d) the registration number of the motor vehicle to which the towing authorisation relates,
  - (e) the place to which the motor vehicle is to be towed.

Maximum penalty: 50 penalty units.

- (3) A person must not remove a copy of a towing authorisation or a towing notice that is attached to a motor vehicle in accordance with subclause (1) (d) or (2) unless:
- (a) the person is the insurer of the motor vehicle, or
  - (b) in any case where the motor vehicle is not insured—the person is the owner or driver of the motor vehicle, or
  - (c) the person is acting under the written authority of a person referred to in paragraph (a) or (b).

Maximum penalty: 50 penalty units.

- (4) A licensee must ensure that each tow truck driver who is employed or engaged by the licensee complies with the requirements of this clause.

Maximum penalty: 50 penalty units.

#### **44 Towing authorisation books**

- (1) The TTA may, on application by a licensee and on payment of the approved fee, issue the licensee with a towing authorisation book for each tow truck operating under the licence.

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- (2) A licensee must provide a towing authorisation book to each certified driver carrying out towing work under the licence.  
Maximum penalty: 25 penalty units.
- (3) A certified driver must not carry out any towing work unless the driver is in possession of a towing authorisation book.  
Maximum penalty: 15 penalty units.
- (4) A certified driver must produce the towing authorisation book in the driver's possession for inspection on demand by an authorised officer or police officer and allow the person to whom it is produced to take extracts from, or to make copies of, any entry in that book.  
Maximum penalty: 15 penalty units.
- (5) As soon as a certified driver completes a towing authorisation book, the driver must deliver the book to the licensee who gave it to the driver.  
Maximum penalty: 15 penalty units.

#### **45 Keeping and production of towing authorisations**

- (1) A copy of any towing authorisation received by a licensee must be provided by the licensee to the TTA within 28 days of the towing authorisation being completed.  
Maximum penalty: 5 penalty units.
- (2) A licensee must:
  - (a) keep the following for at least 5 years at the licensee's place of business as specified in the licence:
    - (i) the original of each completed towing authorisation that relates to a tow truck operated under the licence,
    - (ii) any towing authorisation book that has been issued to the licensee, and
  - (b) immediately on demand by an authorised officer or a police officer, produce for inspection any such towing authorisation or towing authorisation book kept by the licensee or any copy of such an authorisation to which the licensee has reasonable access, and

- (c) allow the person to whom such a towing authorisation or towing authorisation book is produced to take extracts from, or to make copies of, the authorisation or book or to remove the authorisation or book for the purposes of evidence.

Maximum penalty: 20 penalty units.

- (3) If a licence expires or is revoked or surrendered, the person to whom the licence was issued must return to the TTA within 7 days of the expiration, revocation or surrender:
  - (a) any completed original towing authorisation that has been delivered to the person, and
  - (b) any towing authorisation books supplied to the person, and
  - (c) any towing notice that has not been completed.

Maximum penalty: 20 penalty units.

**[16] Clause 67 Prohibited tow trucks: section 56**

Omit “do not” from paragraph (c) of the definition of *one-tonne tow truck* in clause 67 (3) (c).

**[17] Clause 70 Penalty notices**

Omit “Column 3” from clause 70 (b). Insert instead “Column 2”.

**[18] Clause 71 Short descriptions**

Omit the clause.

**[19] Clause 73**

Omit the clause. Insert instead:

**73 Transitional provision—fees**

A fee prescribed by clause 6, 11, 14 or 20 of this Regulation (as in force immediately before 1 June 2002) is taken to be a fee determined by the TTA until the TTA determines a different fee in accordance with the relevant section of the Act.

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### [20] Schedule 1 Penalty notice offences

Omit all matter contained in Column 2, and renumber Column 3 as Column 2.

### [21] Schedule 1

Omit the matter relating to sections 46 to 53. Insert instead:

Section 49 (1)	\$1,100
Section 50 (1)	\$1,100
Section 51 (2)	\$1,100
Section 51 (3)	\$1,100
Section 51 (4)	\$1,100
Section 53	\$1,100

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Omit the matter relating to clauses 24 to 47. Insert instead:

Clause 28 (3)	\$550
Clause 33	\$440
Clause 36	\$1,100
Clause 39	\$1,100
Clause 42	\$440
Clause 43 (1)	\$1,100
Clause 43 (2)	\$1,100
Clause 43 (3)	\$1,100
Clause 43 (4)	\$1,100
Clause 44 (2)	\$550

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Clause 44 (3)	\$335
Clause 44 (4)	\$335
Clause 44 (5)	\$335
Clause 45 (1)	\$110
Clause 45 (2)	\$440
Clause 45 (3)	\$440

BY AUTHORITY