

**COST RECOVERY: SYNTHESIS**

**for Elissa Hicks, Legislative Analyst, WSDOT Government Relations**

**by Aaron Poor, TRAC Synthesis Editor  
Kathy Lindquist, WSDOT Research Office  
Michel Wendt, WSDOT Library**

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**Western State Policies**

Arizona

**Arizona Revised Statutes § 28-1107, Liability; highway or structure damage [p. 4]**

A. A person driving a vehicle, object or contrivance on a highway or highway structure is liable for all damage that the highway or structure may sustain as a result of an illegal operation or driving or moving of the vehicle, object or contrivance or as a result of operating, driving or moving a vehicle, object or contrivance weighing or measuring in excess of the maximum weight or height in this article even if authorized by a special permit issued as provided in section 28-1094 or 28-1103 . . .

C. The authorities in control of the highway or highway structure may recover the damage in a civil action.

Decisions Under Prior Law:

Liability:

This section, which imposes liability on the drivers and owners of oversize vehicles for damage to highways or highway structures caused by the movement of these vehicles, does not confer authority, expressed or implied, upon ADOT to require oversize load permittees to compensate the state for any damages other than damages to highways and related structures. State v. C & H Nationwide, Inc., 179 Ariz. 164, 876 P.2d 1199 (Ct. App. 1994).

California

**Cal Veh Code § 17300 (2008): Willful or negligent damage; Littering [p. 9]**

(a) A person who willfully or negligently damages a street or highway, or its appurtenances, including, but not limited to, guardrails, signs, traffic signals, snow poles, and similar facilities, is liable for the reasonable cost of the repair or replacement thereof.

(b) A person who willfully damages or destroys a memorial sign placed by the Department of Transportation, including, but not limited to, a sign memorializing a victim under Section 101.10 of the Streets and Highways Code, is liable for that damage or destruction for the highest of the following amounts:

(1) One thousand five hundred dollars (\$1,500).

(2) The actual repair cost or replacement cost, whichever is applicable.

(c) A person who willfully or negligently causes or permits the contents of a vehicle to be deposited upon a street or highway, or its appurtenances, is liable for the reasonable costs of removing those contents from the street or highway or its appurtenances.

	<p>(d) The liability stated in this section also applies to an owner of a vehicle operated with the owner's permission, as provided in Article 2 (commencing with Section 17150), and includes liability for the reasonable cost of necessary safety precautions, including, but not limited to, warning traffic, the removal of debris resulting from accidents, the removal of any materials, or providing detours.</p> <p>(e) The Department of Transportation and local authorities, with respect to highways under their respective jurisdictions, may present claims for liability under this section, bring actions for recovery thereon, and settle and compromise, in their discretion, claims arising under this section.</p> <p>(f) If the Department of Transportation or a local authority provides services on a highway outside its jurisdiction, at the request of the department or the local authority that has jurisdiction over that highway, the department or the local authority may present a claim for liability for rendering this service under this section, bring actions for recovery thereon, and, in its discretion, settle and compromise the claim.</p> <p><b>Cal Veh Code § 17301 (2007): Damage by illegal operation of vehicle; Vehicles operated under special permits [p. 14]</b></p> <p>(a) Any person driving any vehicle, object, or contrivance over a highway or bridge is liable for all damages which the highway or bridge may sustain as a result of any illegal operation, driving or moving of the vehicle, object, or contrivance, or as a result of operating, driving, or moving any vehicle, object, or contrivance weighing in excess of the maximum weight specified in this code which is operated under a special permit issued by the Department of Transportation.</p> <p>(b) Whenever the driver is not the owner of the vehicle, object, or contrivance but is operating, driving, or moving the same with the express or implied permission of the owner, the owner and driver are jointly and severally liable for the damage.</p> <p><b>Cal Veh Code § 17302 (2007): Violation of weight or size limits [p. 16]</b></p> <p>The driver, or the owner and driver, jointly, as the case may be, are also liable for all damages that any highway or bridge sustains as the result of any operation, driving, or moving of any vehicle that exceeds any of the limitations imposed by Division 15 (commencing with Section 35000), Chapter 1 (commencing with Section 29000) of Division 13, Section 21461 with respect to a sign erected under Section 35655, and Sections 21712 and 23114 even though the vehicle is exempted from the limitations by Section 35001, 35104, 35105, 35106, 35108, 35250, 35400, 35414, or 36615.</p>
Colorado	<p><b>Colorado Revised Statutes 42-4-512 (2007): Liability for damage to highway [p. 22]</b></p> <p>(1) No person shall drive, operate, or move upon or over any highway or highway structure any vehicle, object, or contrivance in such a manner so as to cause damage to said highway or highway structure. When the damage sustained to said highway or highway structure is the result of the operating, driving, or moving of such vehicle, object, or contrivance weighing in excess of the maximum weight authorized by sections 42-4-501 to 42-4-512 and 42-4-1407, it shall be no defense to any action, either civil or criminal, brought against such person that the weight of the vehicle was authorized by special permit issued in accordance with sections 42-4-501 to 42-4-512 and 42-4-1407.</p> <p>(2) Every person violating the provisions of subsection (1) of this section shall be liable for all damage which said highway or highway structure may sustain as a result thereof. Whenever the driver of such vehicle, object, or contrivance is not the owner thereof but is</p>

	<p>operating, driving, or moving such vehicle, object, or contrivance with the express or implied consent of the owner thereof, then said owner or driver shall be jointly and severally liable for any such damage. The liability for damage sustained by any such highway or highway structure may be enforced by a civil action by the authorities in control of such highway or highway structure. No satisfaction of such civil liability, however, shall be deemed to be a release or satisfaction of any criminal liability for violation of the provisions of subsection (1) of this section.</p>
New Mexico	<p><b>DOT Risk Management Section</b>  Manages the loss control program in damage cost recovery due to damage of state property due to third party accidents, research legal/tort claims for adjustors and attorneys.  <a href="http://www.nmshtd.state.nm.us/main.asp?secid=13892">http://www.nmshtd.state.nm.us/main.asp?secid=13892</a></p>
Wyoming	<p><b>Wyoming Statutes § 31-12-103 (2008): General liability [p. 257]</b>  Any person operating, driving or moving any vehicle, object or contrivance over a street, highway or bridge is liable for all damages which the street, highway, bridge or appurtenances thereto or other structures in connection therewith, may sustain, as a result of any illegal or negligent operation or as a result of operating, driving or moving any vehicle, object or contrivance in excess of the maximum weight or height specified and prescribed by law although authorized by a special permit issued as provided by law.</p> <p><b>Wyoming Statutes § 31-18-702 (2008): General liability [p. 258]</b>  Any person operating, driving or moving any <i>commercial</i> vehicle, object or contrivance over a street, highway or bridge is liable for all damages which the street, highway, bridge or appurtenances thereto or other structures in connection therewith, may sustain, as a result of any illegal or negligent operation or as a result of operating, driving or moving any commercial vehicle, object or contrivance in excess of the maximum weight or height specified and prescribed by law although authorized by a special permit issued as provided by law.</p>
<b>NOTABLE STATE POLICIES</b>	
Florida	<p><b>Submission and Recovery of Property Damage Claims</b>  Office of the General Counsel, April 2004, Topic No. 225-085-002-b</p> <p><u>Property Damage (p. 2)</u>: Damage to any real or personal property owned by the Department [of Transportation] caused by the negligence, vicarious liability, criminal acts, or wanton and reckless disregard of the law of third parties. This includes, but is not limited to, the cost of repair and/ or replacement of real or personal property, the manpower and equipment costs to clean up spills, and the manpower costs for inspections and costs incurred in overseeing the abatement and /or remediation of hazardous material spills.</p> <p><u>Documenting Damages (p. 6)</u>: The person who caused the damage and the insurance carrier are entitled to a complete explanation of the damages and costs. The following documentation shall be included with the Property Damage Claim submitted to the OGC, Claims Recovery Section by the Accountable Office:</p>

- The cost of any repairs, temporary or otherwise.
- The cost of traffic control, cleanup, and of mobilization of repair crews.
- The costs of state force, or non state force repairs.

<http://www2.dot.state.fl.us/proceduraldocuments/procedures/bin/225085002.pdf>

**Hazardous Material Emergency Response Cost Recovery Ordinance**

As used in this article, the following words and phrases shall have the meaning indicated unless the context otherwise requires:

Costs means all reasonable and necessary expenses that are incurred by [political subdivision] as a direct result of the hazardous materials emergency response, including but not limited to the following:

1. Emergency response, incident assessment, control, containment and abatement of a hazardous materials incident, to include costs associated with transportation and temporary storage of hazardous materials if such transportation and temporary storage is necessary to control and contain the hazardous materials incident.
2. Ensuring the safety of the public, both on and off the site of the hazardous materials incident.
3. Repairing or replacing equipment if said equipment was damaged or destroyed as a direct result of the hazardous materials incident.
4. Equipment, including rental equipment, utilized by the [political subdivision] to the extent such labor and equipment is necessary for emergency response, incident assessment, control, containment and abatement of the immediate hazard.
5. Contract labor and equipment utilized by the [political subdivision] for emergency response, incident assessment, control, containment and abatement of the immediate hazard.
6. Overtime costs for compensation of [political subdivision employees] for the time devoted specifically to the hazardous materials incident.
7. Labor and equipment utilized by the [political subdivision] via a mutual aid agreement for emergency response, incident assessment, control, containment and abatement of the immediate hazard.
8. Disposable materials and supplies consumed and expended as a result of the hazardous materials incident, including but not limited to, absorbents, foams, neutralization agents, over pack drums or containers.
9. Decontamination of equipment that is contaminated during the hazardous materials incident.
10. Laboratory costs for purposes of analyzing samples taken during the release.

<http://www.hazmat.floridadisaster.org/costrecovery.doc>

Illinois

**Illinois Revised Statutes § 625 ILCS 5/15-318 (2008): Liability if highway or structure damaged [p. 55]**

(a) Any person driving any vehicle, object or contrivance upon any highway or highway structure is liable for all damage which the highway or structure may sustain as a result of any illegal operation, driving or moving of such vehicle, object or contrivance, or as a result of operating, driving, or moving any vehicle, object, or contrivance exceeding the maximum dimensions or weighing in excess of the maximum weight specified in this Chapter but authorized by a special permit issued as provided in this Chapter. The measure of

	liability is the cost of repairing a facility partially damaged or the depreciated replacement cost of a facility damaged beyond repair together with all other expenses incurred by the authorities in control of the highway or highway structure in providing a temporary detour, including a temporary structure, to serve the needs of traffic during the period of repair or replacement of the damaged highway or highway structure.
South Carolina	<p><b>Code of Laws, Transportation, Section 57-3-630, Bringing of suits</b></p> <p>The department may bring suits in its name, whenever a cause of action shall accrue to the State by reason of the injury, damage, destruction, or obstruction of any road in the state highway system, any bridge, culvert, ditch, causeway, embankment, wharf, tollgate, tollhouse, or other facility or any equipment, apparatus, or property, real or personal, belonging to the state highway system. Suits for the recovery of appropriate damages, and other proceedings incident thereto, shall be instituted in any court of competent jurisdiction, for and in behalf of the State in the name of the department as plaintiff. Complaints and other pleadings requiring verification may be verified by the director or any other person duly authorized by him.</p>
<b>RELATED RESOURCES</b>	
<p><b>Alaska Department of Environmental Conservation Cost Recovery Laws</b></p> <p>The Alaska Department of Environmental Conservation (DEC) is tasked with carrying out these laws. The Prevention and Emergency Response Program (PERP) within the Division of Spill Prevention and Response (SPAR) is responsible for ensuring prevention of spills and response to spills that do occur. To make sure spills get cleaned up, Alaskans have established the Oil and Hazardous Substance Release Prevention and Response Fund, which pays for State and local government cleanup costs. The Department is mandated by statute to seek cost recovery from the spiller and reimburse the fund.</p> <p><a href="http://209.85.173.104/search?q=cache:akZ9N_XaXv8J:www.ak-prepared.com/plans/word_docs/StateHazardMitigationPlan07/5-13%2520Oil%2520Spills%2520%26%2520Hazardous%2520Materials.doc+cost+recovery+definition+transportation%2BIllegal%2Bproperty%2Bdamage&amp;hl=en&amp;ct=cl">http://209.85.173.104/search?q=cache:akZ9N_XaXv8J:www.ak-prepared.com/plans/word_docs/StateHazardMitigationPlan07/5-13%2520Oil%2520Spills%2520%26%2520Hazardous%2520Materials.doc+cost+recovery+definition+transportation%2BIllegal%2Bproperty%2Bdamage&amp;hl=en&amp;ct=cl</a></p>	
<p><b>Emergency Response Cost Recovery</b></p> <p>City of Clio, Michigan, 2002</p> <p><a href="http://www.clio.govoffice.com/vertical/Sites/%7B7D095F7E-8BBA-4ED8-BB46-A0DE61A15077%7D/uploads/%7BB6091E08-ED51-4E18-8800-9C1A6D8B6A2B%7D.DOC">http://www.clio.govoffice.com/vertical/Sites/%7B7D095F7E-8BBA-4ED8-BB46-A0DE61A15077%7D/uploads/%7BB6091E08-ED51-4E18-8800-9C1A6D8B6A2B%7D.DOC</a></p>	
<p><b>Valuation of Temporary Transportation Facility Use Losses</b></p> <p>Jeffrey T. Ryan and Jodi Carson, December 2002</p> <p><i>From Abstract:</i> The intent of this investigation was to identify any and all costs associated with temporary facility use losses and determine what, if any, costs are recoverable by facility owners.</p> <p><a href="http://www.mdt.mt.gov/research/docs/research_proj/facility/final_report.pdf">http://www.mdt.mt.gov/research/docs/research_proj/facility/final_report.pdf</a></p>	
<b>Cost Recovery Policy Issues for Departments of Transportation [for negligent design]</b>	

FHWA, September 2005

[http://www.acec.org/advocacy/cost\\_recovery\\_issues\\_090805.pdf](http://www.acec.org/advocacy/cost_recovery_issues_090805.pdf)

**The Management of Cost Recovery by Selected Regulators**

Australia National Audit Office, 2008

[http://www.anao.gov.au/uploads/documents/2007-08\\_Audit\\_Report\\_23.pdf](http://www.anao.gov.au/uploads/documents/2007-08_Audit_Report_23.pdf)