

CHAPTER 234

TRANSPORTATION

SENATE BILL 04-186

BY SENATOR(S) Entz, Andrews, Lamborn, Cairns, Dyer, Evans, Gordon, Grossman, Hagedorn, Hillman, Isgar, Johnson S., Kester, Phillips, Tapia, Taylor, Groff, Sandoval, Teck, and Tupa; also REPRESENTATIVE(S) Larson, Borodkin, Butcher, Cloer, Coleman, McFadyen, Merrifield, Ragsdale, Rippey, Salazar, Smith, Stafford, Weddig, and Williams S.

AN ACT

CONCERNING THE AUTHORIZATION OF ROADSIDE MEMORIALS WITHIN PUBLIC HIGHWAY EASEMENTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 2 of title 43, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

43-2-149. Roadside memorials authorized - specifications - permit. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COUNTY MEMORIAL" MEANS A PLAQUE, MONUMENT, OR SIMILAR OBJECT PLACED IN A PARTICULAR LOCATION ON A COUNTY ROAD TO COMMEMORATE ONE OR MORE PEOPLE WHO DIED ON THAT COUNTY ROAD.

(b) "DEPARTMENT" MEANS THE DEPARTMENT OF TRANSPORTATION.

(c) "ERECT" MEANS TO CONSTRUCT OR ALLOW TO BE CONSTRUCTED.

(d) "HIGHWAY" MEANS ANY ROAD IN THE STATE HIGHWAY SYSTEM, AS DEFINED IN SECTION 43-2-101 (1).

(e) "MAINTAIN" MEANS TO PRESERVE, KEEP IN REPAIR, OR REPLACE A ROADSIDE MEMORIAL.

(f) "STATE MEMORIAL" MEANS A SIGN ON A HIGHWAY TO COMMEMORATE ONE OR MORE PEOPLE WHO DIED ON THAT HIGHWAY.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) (a) (I) THE DEPARTMENT SHALL ERECT AND MAINTAIN A STATE MEMORIAL REQUESTED IN ACCORDANCE WITH THIS SUBSECTION (2). THE DEPARTMENT SHALL BE EXCLUSIVELY RESPONSIBLE FOR THE TYPE, LOCATION, AND DESIGN OF THE STATE MEMORIAL.

(II) AN APPLICATION FOR A STATE MEMORIAL SHALL BE MADE ON A FORM PROVIDED BY THE DEPARTMENT, SHALL BE SIGNED BY THE APPLICANT OR THE APPLICANT'S DULY AUTHORIZED OFFICER OR AGENT, AND SHALL INCLUDE:

(A) THE NAME AND ADDRESS OF THE APPLICANT;

(B) THE NAME OF THE INDIVIDUAL MEMORIALIZED AND THE HIGHWAY WHERE SUCH INDIVIDUAL LOST HIS OR HER LIFE; AND

(C) A FEE TO BE DETERMINED BY THE DEPARTMENT; EXCEPT THAT SUCH FEE SHALL NOT EXCEED THE DIRECT AND INDIRECT EXPENSES ASSOCIATED WITH ERECTING AND MAINTAINING SUCH STATE MEMORIAL. THE DEPARTMENT SHALL TRANSMIT THE FEE TO THE STATE TREASURER FOR DEPOSIT IN THE STATE HIGHWAY FUND, CREATED IN SECTION 43-1-219.

(b) A STATE MEMORIAL SHALL BE LOCATED WITHIN THE HIGHWAY EASEMENT AS FAR FROM THE ROADWAY AS IS PRACTICABLE OR REASONABLY NECESSARY TO PRESERVE PUBLIC SAFETY AND FACILITATE HIGHWAY MAINTENANCE, GIVEN THE PROPOSED LOCATION. A STATE MEMORIAL SHALL CONTAIN THE NAME OF THE PERSON MEMORIALIZED AND SHALL BE ERECTED AND MAINTAINED FOR AT LEAST TWO YEARS.

(c) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, IF ANY PROVISION OF THIS SECTION CONFLICTS WITH FEDERAL LAW, THE DEPARTMENT SHALL NOT ERECT OR MAINTAIN STATE MEMORIALS PURSUANT TO THIS SECTION.

(3) (a) (I) A PERSON MAY ERECT AND MAINTAIN A COUNTY MEMORIAL IF THE PROPOSED COUNTY MEMORIAL CONFORMS WITH THE REQUIREMENTS OF THIS SUBSECTION (3) AND, WHERE REQUIRED BY THE COUNTY, THE APPLICABLE BOARD OF COUNTY COMMISSIONERS, OR THE BOARD'S DESIGNEE, HAS ISSUED A PERMIT TO ERECT THE COUNTY MEMORIAL ON A COUNTY ROAD IN A PRIMARY OR SECONDARY SYSTEM, AS DESCRIBED IN SECTION 43-2-108. AN APPLICANT FOR A PERMIT TO ERECT A COUNTY MEMORIAL ON A COUNTY ROAD SHALL BE EXCLUSIVELY RESPONSIBLE FOR THE TYPE, LOCATION, AND DESIGN OF THE COUNTY MEMORIAL, SUBJECT TO THE REQUIREMENTS OF THIS SECTION.

(II) AN APPLICATION FOR A PERMIT SHALL BE MADE ON A FORM PROVIDED BY THE COUNTY, SHALL BE SIGNED BY THE APPLICANT OR THE APPLICANT'S DULY AUTHORIZED OFFICER OR AGENT, AND SHALL INCLUDE:

(A) THE TYPE, PROPOSED LOCATION, AND DIMENSIONS OF THE PROPOSED COUNTY MEMORIAL AND OTHER INFORMATION REQUIRED BY THE FORM;

(B) THE NAME AND ADDRESS OF THE APPLICANT;

(C) THE NAME OF THE INDIVIDUAL MEMORIALIZED AND THE HIGHWAY WHERE SUCH INDIVIDUAL LOST HIS OR HER LIFE;

(D) AN AGREEMENT BY THE APPLICANT TO ERECT AND MAINTAIN THE COUNTY MEMORIAL IN A SAFE, SOUND, AND GOOD CONDITION; AND

(E) A UNIFORM FEE NOT TO EXCEED THE COUNTY'S DIRECT AND INDIRECT EXPENSES ASSOCIATED WITH ISSUING AND ADMINISTERING THE PERMIT. THE COUNTY SHALL TRANSMIT THE FEE TO THE COUNTY TREASURER, WHO SHALL CREDIT IT TO THE APPLICABLE COUNTY HIGHWAY OR TRANSPORTATION FUND.

(b) COUNTY MEMORIALS SHALL NOT EXCEED THREE FEET IN HEIGHT ABOVE THE GROUND, TWO FEET IN WIDTH, AND SIX INCHES IN THICKNESS. COUNTY MEMORIALS SHALL BE CONSTRUCTED OF A DURABLE MATERIAL AND SHALL NOT CONTAIN ANY MOVING OR ELECTRONIC PARTS. COUNTY MEMORIALS SHALL BE LOCATED WITHIN THE HIGHWAY EASEMENT AS FAR FROM THE ROADWAY AS IS PRACTICABLE OR REASONABLY NECESSARY TO PRESERVE PUBLIC SAFETY AND FACILITATE HIGHWAY MAINTENANCE, GIVEN THE PROPOSED LOCATION. COUNTY MEMORIALS MAY CONTAIN THE NAME OF THE PERSON MEMORIALIZED, THE DATES OF SUCH PERSON'S BIRTH AND DEATH, AND OTHER RELEVANT INFORMATION.

(4) (a) THE DEPARTMENT SHALL DENY AN APPLICATION FOR A STATE MEMORIAL IF THE PROPOSED LOCATION OF THE MEMORIAL WOULD RESULT IN A POTENTIAL SAFETY HAZARD OR MAINTENANCE IMPEDIMENT. THE DEPARTMENT MAY SUGGEST THAT THE APPLICANT CONSIDER AN ALTERNATIVE DESIGN OR PLACEMENT AND MAY REMOVE ANY MEMORIAL ON A HIGHWAY THAT DOES NOT COMPLY WITH THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION. THE DEPARTMENT MAY DENY OR REVOKE A PERMIT FOR FALSE OR MISLEADING INFORMATION GIVEN IN THE APPLICATION FOR A STATE MEMORIAL PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(b) A BOARD OF COUNTY COMMISSIONERS, OR THE BOARD'S DESIGNEE, SHALL DENY AN APPLICATION IF THE PROPOSED TYPE OR LOCATION OF THE COUNTY MEMORIAL WOULD RESULT IN A POTENTIAL SAFETY HAZARD OR MAINTENANCE IMPEDIMENT. THE BOARD OF COUNTY COMMISSIONERS, OR THE BOARD'S DESIGNEE, MAY SUGGEST THAT THE APPLICANT CONSIDER AN ALTERNATIVE DESIGN OR PLACEMENT AND MAY REMOVE ANY COUNTY MEMORIAL THAT DOES NOT COMPLY WITH SUBSECTION (3) OF THIS SECTION, INCLUDING THROUGH THE APPLICANT'S FAILURE TO SUBSTANTIALLY PERFORM ANY ERECTION OR MAINTENANCE AGREEMENT SPECIFIED IN THE PERMIT. THE BOARD OF COUNTY COMMISSIONERS, OR THE BOARD'S DESIGNEE, MAY DENY OR REVOKE A PERMIT FOR FALSE OR MISLEADING INFORMATION GIVEN IN THE APPLICATION OR FOR THE ERECTION OR MAINTENANCE OF A COUNTY MEMORIAL IN VIOLATION OF THIS SECTION.

(c) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE A COUNTY TO ESTABLISH A PERMITTING PROCESS PURSUANT TO THIS SECTION, BUT NO COUNTY MAY PROHIBIT OR DENY REQUESTS FOR PLACEMENT OF ROADSIDE MEMORIALS ON COUNTY ROADS IN THE ABSENCE OF A PERMITTING PROCESS THAT COMPLIES WITH THIS SECTION.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 20, 2004