

CHAPTER 244

GOVERNMENT - STATE

HOUSE BILL 10-1113

BY REPRESENTATIVE(S) McFadyen, Sonnenberg, Vaad, Bradford, Casso, Hullinghorst, King S., Looper, Pace, Pommer, Priola, Rice, Swalm, Vigil, Carroll T., Kerr J., Merrifield, Primavera;
also SENATOR(S) Hodge, Kester, Whitehead.

AN ACT

CONCERNING THE MODIFICATION OF AGENCIES THAT PERFORM OVERSIGHT OF THE COMMERCIAL VEHICLE INDUSTRY THROUGH A TRANSFER OF THE MOTOR CARRIER SAFETY ASSISTANCE PROGRAM OF THE PORTS OF ENTRY SECTION IN THE DEPARTMENT OF REVENUE TO THE COLORADO STATE PATROL IN THE DEPARTMENT OF PUBLIC SAFETY, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Legislative declaration - intent. (1) The general assembly hereby finds and declares that:

(a) Although the ports of entry section is currently operated by the department of revenue, many duties and functions of the ports of entry section are also performed by the Colorado state patrol in the department of public safety;

(b) The motor carrier safety assistance program of the port of entry section of the department of revenue would operate more efficiently if consolidated within the Colorado state patrol in the department of public safety;

(c) Such a transfer would promote operational efficiency and programmatic consolidation of state safety inspection and enforcement responsibilities by assigning program administration to a single agency;

(d) Such a transfer would improve traffic safety by implementing a broader and more effective commercial vehicle safety enforcement program because more state troopers would be strategically located throughout the state; and

(e) Certain statutory changes are required to clarify the authority of the

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

department of revenue and the Colorado state patrol in the department of public safety as the authority of those departments relate to the ports of entry.

(2) Therefore, it is the intent of the general assembly that:

(a) Such a transfer be completed prior to the implementation of the "CSA 2010" initiative by the federal motor carrier safety administration; and

(b) That the department of public safety, in coordination with the department of revenue and the department of transportation, initiate a study to examine additional efficiencies within the port of entry section, as specified in section 2 of this act.

SECTION 2. Part 1 of article 33.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-33.5-111. Motor carrier safety assistance - study. (1) ON AUGUST 15, 2010, THE MOTOR CARRIER SAFETY INSPECTION PROGRAM OF THE PORTS OF ENTRY SECTION IN THE DEPARTMENT OF REVENUE IS HEREBY TRANSFERRED TO THE DEPARTMENT OF PUBLIC SAFETY AND ALLOCATED TO THE COLORADO STATE PATROL.

(2) THE DEPARTMENT OF PUBLIC SAFETY, IN COLLABORATION WITH THE DEPARTMENT OF TRANSPORTATION AND THE DEPARTMENT OF REVENUE, SHALL ISSUE A REQUEST FOR PROPOSAL FOR A PERFORMANCE STUDY TO BE CONDUCTED BY AN INDEPENDENT PRIVATE VENDOR, SUBJECT TO AVAILABLE APPROPRIATIONS. THE DEPARTMENTS SHALL WORK COOPERATIVELY TO DETERMINE THE SCOPE OF THE STUDY AND THE INDEPENDENT PRIVATE VENDOR SHALL REQUEST AND CONSIDER INPUT FROM POTENTIALLY IMPACTED PARTIES DURING THE COURSE OF THE STUDY. THE STUDY SHALL INCLUDE, BUT NOT BE LIMITED TO, AN EXAMINATION OF THE PORTS OF ENTRY OPERATIONS, INFRASTRUCTURE, MANAGEMENT, POTENTIAL COST SAVINGS OR EFFICIENCIES, AS WELL AS HOW THE PORT OF ENTRY SECTION MAY MAXIMIZE RESOURCES AND TECHNOLOGY. THE STUDY SHALL ALSO DETERMINE WHICH PRINCIPAL DEPARTMENT IS MOST APPROPRIATE FOR OPERATING THE PORTS OF ENTRY SECTION IN A COST-EFFECTIVE MANNER. THE INDEPENDENT PRIVATE VENDOR SHALL COMPLETE THE PERFORMANCE REVIEW AND REPORT ITS FINDINGS TO THE TRANSPORTATION COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES NO LATER THAN JUNE 1, 2011.

SECTION 3. 42-8-104 (2), Colorado Revised Statutes, is amended to read:

42-8-104. Powers and duties. (2) The personnel of a port of entry weigh station, during the time that they are actually engaged in performing their duties as such and while acting under proper orders or regulations issued by the executive director of the department of revenue, shall have and exercise all the powers invested in peace officers in connection with the enforcement of the provisions of this article, ~~articles 2 and 20~~ ARTICLE 2 OF THIS TITLE, PARTS 2, 3, AND 5 OF ARTICLE 20 of this title, part 5 of article 4 of this title, and ~~sections 42-3-107 (17), 42-4-225 (1.5), and 42-4-235~~ SECTION 42-3-107 (17); except that they shall not have the power to serve civil writs and process and, in the exercise of their duties, such personnel shall have the authority to restrain and detain persons or vehicles and may impound any vehicle until any tax or license fee imposed by law is paid or until compliance is had with any tax or regulatory law or regulation issued thereunder.

SECTION 4. 42-8-111 (2) (b) (II), Colorado Revised Statutes, is amended to read:

42-8-111. Cooperative agreements with contiguous states for operations of ports of entry - regulations. (2) An agreement with a contiguous state or contiguous states for the operation of ports of entry at the borders between Colorado and such contiguous state or states entered into under the provisions of this section may include, but shall not be limited to, the following provisions:

(b) A grant of authority to the port of entry employees and officials of Colorado and to the port of entry employees and officials of each other state which is a party to such agreement to:

(II) Take actions to enforce the laws of other states ~~which~~ THAT are parties to the agreement, including, but not limited to, the monitoring of licenses and other credential usage, the enforcement of tax restraint, distraint, or levy orders, the issuance of civil citations, and the conduct of any necessary ~~safety and~~ equipment inspections. PORT OF ENTRY PERSONNEL SHALL HAVE AND MAINTAIN THE AUTHORITY TO ENFORCE THE PROVISIONS OF SECTION 42-4-1414 REGARDING THE PROHIBITION ON THE USE OF DYED FUEL ON COLORADO HIGHWAYS.

SECTION 5. 42-20-404, Colorado Revised Statutes, is amended to read:

42-20-404. Inspections. All vehicles carrying nuclear materials entering the state on the public highways shall be inspected by ~~port of entry personnel or~~ Colorado state patrol officers at the ~~port of entry weigh station~~ nearest the point at which the shipment enters the state or at a location specified by the Colorado state patrol. For all shipments originating within the state, inspection shall be made at the point of origination by Colorado state patrol officers. All such inspections conducted by ~~port of entry weigh station personnel and~~ Colorado state patrol officers shall be in accordance with the rules promulgated pursuant to sections 42-4-235, 42-20-108 (2), and 42-20-403.

SECTION 6. 42-20-406 (1) and (2), Colorado Revised Statutes, are amended to read:

42-20-406. Violations - civil penalties - motor vehicles. (1) Any person who violates any provision of this part 4 or part 5 of this article or a rule or regulation promulgated by the chief pursuant to this part 4 and part 5 of this article, except for the violations enumerated in subsection (3) of this section and section 42-20-505, shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. The penalty shall be assessed by the chief upon receipt of a complaint by any investigative personnel of the commission ~~port of entry personnel,~~ or Colorado state patrol officer and after written notice and an opportunity for a hearing pursuant to section 24-4-105, C.R.S. Payment of a civil penalty under this section shall not relieve any person from liability pursuant to article 11 of title 25, part 3 of article 15 of title 25, or article 22 of title 29, C.R.S. Any person who is assessed a penalty pursuant to this subsection (1) shall have the right to appeal the chief's decision by filing a notice of appeal with the court of appeals as specified in section 24-4-106 (11), C.R.S.

(2) Any person who commits any of the acts enumerated in subsection (3) of this section shall be subject to the civil penalty listed in said subsection (3). ~~Ports of entry personnel~~; Investigative personnel of the commission, and officers of the Colorado state patrol shall have the authority to issue civil penalty assessments for the enumerated violations. At any time that a person is cited for a violation enumerated in subsection (3) of this section, the person in charge of or operating the motor vehicle involved shall be given a notice in the form of a civil penalty assessment notice. Such notice shall be tendered by the enforcement official and shall contain the name and address of such person, the license number of the motor vehicle involved, if any, the number of such person's driver's license, the nature of the violation, the amount of the penalty prescribed for such violation, the date of the notice, a place for such person to execute a signed acknowledgment of his or her receipt of the civil penalty assessment notice, a place for such person to execute a signed acknowledgment of liability for the cited violation, and such other information as may be required by law to constitute such notice as a complaint to appear in court should the prescribed penalty not be paid within ten days. Every cited person shall execute the signed acknowledgment of his or her receipt of the civil penalty assessment notice. The acknowledgment of liability shall be executed at the time the cited person pays the prescribed penalty. The person cited shall pay the civil penalty specified in subsection (3) of this section for the violation involved at the office of the department of revenue either in person or by postmarking such payment within ten days of the citation. The department of revenue shall accept late payment of any penalty assessment up to twenty days after such payment becomes due. If the person cited does not pay the prescribed penalty within ten days of the notice, the civil penalty assessment notice shall constitute a complaint to appear in court unless payment for such penalty assessment has been accepted by the department of revenue as evidenced by receipt, and the person cited shall, within the time specified in the civil penalty assessment notice, file an answer to this complaint with the county court for the county in which the penalty assessment was issued. The attorney general shall represent the state agency that issued the civil penalty assessment notice if so requested by the agency.

SECTION 7. Appropriation - adjustments to the 2010 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the highway users tax fund pursuant to section 43-4-201 (3) (a) (III) (C), Colorado Revised Statutes, not otherwise appropriated, to the department of public safety, for allocation to the Colorado state patrol, for the fiscal year beginning July 1, 2010, the sum of two hundred fifty-five thousand eleven dollars (\$255,011) cash funds, or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2010, shall be adjusted as follows:

(a) The appropriation to the department of public safety, executive directors office, for centrally appropriated line items, is increased by nine thousand six hundred twenty-five dollars (\$9,625) cash funds. Said cash funds shall be from the highway users tax fund pursuant to section 43-4-201 (3) (a) (III) (C), Colorado Revised Statutes.

(b) The appropriation to the department of public safety, Colorado state patrol,

is increased by eight hundred thousand eight hundred ninety-one dollars (\$800,891) total funds and 8.8 FTE. Of said sum, thirty thousand seven hundred seventy dollars (\$30,770) shall be cash funds from the highway users tax fund pursuant to section 43-4-201 (3) (a) (III) (C), Colorado Revised Statutes, twenty-nine thousand one hundred seventy-six dollars (\$29,176) shall be cash funds from the nuclear materials transportation fund created in section 42-20-511, Colorado Revised Statutes, seventy-three thousand three hundred sixty-four dollars (\$73,364) shall be reappropriated funds from the motor carrier safety assistance program, and six hundred sixty-seven thousand five hundred eighty-one dollars (\$667,581) shall be federal funds from the motor carrier safety assistance program grant.

(c) The appropriation to the department of revenue, executive directors office, for centrally appropriated line items, is decreased by nine thousand six hundred twenty-five dollars (\$9,625) cash funds. These funds shall be from the highway users tax fund pursuant to section 43-4-201 (3) (a) (III) (C), Colorado Revised Statutes.

(d) The appropriation to the department of revenue, motor carrier services division, is decreased by eight hundred thousand eight hundred ninety-one dollars (\$800,891) total funds and 8.8 FTE. Of said sum, thirty thousand seven hundred seventy dollars (\$30,770) shall be cash funds from the highway users tax fund pursuant to section 43-4-201 (3) (a) (III) (C), Colorado Revised Statutes, twenty-nine thousand one hundred seventy-six dollars (\$29,176) shall be cash funds from the nuclear materials transportation fund created in section 42-20-511, Colorado Revised Statutes, seventy-three thousand three hundred sixty-four dollars (\$73,364) shall be reappropriated funds from the motor carrier safety assistance program, and six hundred sixty-seven thousand five hundred eighty-one dollars (\$667,581) shall be federal funds from the motor carrier safety assistance program grant.

SECTION 8. Specified effective date. This act shall take effect July 1, 2010.

SECTION 9. 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 21, 2010