

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 10-1287

BY REPRESENTATIVE(S) Lambert, Acree, Baumgardner, Bradford, DelGrosso, Ferrandino, Gardner C., Kerr J., Looper, May, McNulty, Murray, Nikkel, Pommer, Priola, Sonnenberg, Stephens, Summers, Tipton, Court, Hullinghorst, Kagan, Labuda, Massey, McFadyen, Todd, Gardner B.;
also SENATOR(S) Cadman, Renfroe, Harvey, Mitchell, Keller, King K., Kopp, Lundberg, Schultheis, Spence, Tapia, White, Newell, Steadman.

CONCERNING THE USE OF A STATE-OWNED MOTOR VEHICLE FOR COMMUTING PURPOSES.

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

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

(a) The state of Colorado should generally limit the use of state-owned motor vehicles to official state business, but incidental personal use is sometimes unavoidable, reasonable, and for the benefit of the state;

(b) Regular personal use of state-owned motor vehicles for commuting is considered to be a fringe benefit, and in most instances employees should fairly and fully reimburse the state for this personal use;

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

(c) Unreimbursed fringe benefits may be subject to federal and state taxation; and

(d) Actual vehicle operating costs and reimbursements for commuting must be reported accurately to ensure appropriate oversight of state assets, preparation of the state budget, and compliance with federal and state laws.

(2) Now, therefore, the general assembly intends to increase transparency and oversight of the use of state-owned motor vehicles and to ensure that such vehicles used for commuting are managed in a fair, responsible, and economical manner.

SECTION 2. 24-30-1113, Colorado Revised Statutes, is amended to read:

24-30-1113. Commuting - reimbursement by state officers and employees - state-owned motor vehicle commuter cash fund - creation - definitions. (1) Except as provided in this section, ~~the~~ A state agency shall not assign any state-owned motor vehicle to an ~~officer~~ or employee of a state agency for any reason other than as necessitated by the conduct of official state business.

(2) The use of state-owned motor vehicles for commuting ~~purposes~~ by ~~officers~~ and employees of state agencies ~~between official work stations and residences~~ may be authorized by the state agency's executive director where the state agency's executive director determines that such use is based on rules ~~and regulations~~ promulgated by the division. ~~and which includes~~ SUCH RULES SHALL INCLUDE THE FOLLOWING REQUIREMENTS:

(a) ~~Promotion of~~ COMMUTING WITH THE STATE-OWNED MOTOR VEHICLE PROMOTES a legitimate nonpartisan state interest;

(b) ~~Promotion of~~ COMMUTING WITH THE STATE-OWNED MOTOR VEHICLE PROMOTES the efficient operation of the state motor vehicle fleet system; ~~and~~

(c) COMMUTING WITH THE STATE-OWNED MOTOR VEHICLE is cost-effective to the state agency; AND

(d) THE NEED FOR AN EMPLOYEE TO COMMUTE WITH A STATE-OWNED MOTOR VEHICLE IS SET FORTH IN THE POSITION DESCRIPTION QUESTIONNAIRE FOR THE EMPLOYEE'S POSITION.

(3) (a) A STATE AGENCY SHALL SUBMIT A WRITTEN APPLICATION FOR EACH EMPLOYEE WHO THE EXECUTIVE DIRECTOR OF THE STATE AGENCY AUTHORIZES FOR COMMUTING WITH A STATE-OWNED MOTOR VEHICLE. BEGINNING OCTOBER 1, 2010, NO EMPLOYEE SHALL USE A STATE-OWNED MOTOR VEHICLE FOR COMMUTING, UNLESS THE DIVISION APPROVES THE USE AS CONSISTENT WITH THE CRITERIA FOR COMMUTING AUTHORIZATION. A determination by the ~~director~~ DIVISION that ~~commuting purposes meet~~ AN EMPLOYEE MEETS the criteria for commuting authorization shall be based on review and verification of written application forms and supporting documentation submitted in the manner provided in rules ~~and regulations~~ adopted by the division. THE DIVISION SHALL NOT GRANT APPROVAL FOR AN EMPLOYEE TO USE A STATE-OWNED MOTOR VEHICLE FOR COMMUTING IF THE APPLICATION FORM FOR THE EMPLOYEE IS INCOMPLETE.

(b) BEGINNING OCTOBER 1, 2010, AN EMPLOYEE WHO IS NOT EXEMPT FROM REIMBURSEMENT PURSUANT TO PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION SHALL NOT BE ASSIGNED A MOTOR VEHICLE FOR COMMUTING UNLESS THE EMPLOYEE AGREES IN WRITING THAT THE REIMBURSEMENT FOR COMMUTING MAY BE DEDUCTED FROM HIS OR HER SALARY.

(c) IF AN EMPLOYEE AUTHORIZED TO USE A STATE-OWNED MOTOR VEHICLE FOR COMMUTING HAS THE ASSIGNMENT OF THAT MOTOR VEHICLE REVOKED PURSUANT TO SECTION 24-30-1112 (3) (a) , THE DIVISION SHALL COLLECT REIMBURSEMENT FROM THE EMPLOYEE FOR THE OTHER THAN OFFICIAL BUSINESS USE THAT LEAD TO THE REVOCATION, WHICH AMOUNT SHALL BE IN ADDITION TO ANY OTHER REIMBURSEMENT REQUIRED PURSUANT TO THIS SECTION.

(4) (a) ~~Any individual~~ EXCEPT AS SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (4), AN EMPLOYEE who has received the state agency executive director's authorization to use a state-owned motor vehicle for commuting ~~purposes~~ shall reimburse the state for such use at a rate ~~computed by the division. This rate shall approximate the benefit derived from the use of the vehicle. Reimbursement shall be for twenty days per month regardless of how many days the individual uses the vehicle to commute during the month. Reimbursement shall be made as provided by~~

~~rule~~ THAT IS ESTABLISHED ANNUALLY BASED ON THE GREATER OF EITHER THE COMMUTING VALUATION RULE ESTABLISHED BY THE INTERNAL REVENUE SERVICE PURSUANT TO 26 CFR 1.61-21 OR ANY SUCCESSOR PROVISION OR A LEASE-VALUE METHODOLOGY ESTABLISHED BY THE DIVISION. SUCH REIMBURSEMENT SHALL BE DEDUCTED FROM THE EMPLOYEE'S SALARY BY THE STATE AGENCY, BUT SHALL NOT BE CONSIDERED TO BE STATE AGENCY MONEYS OR APPROPRIATED TO THE STATE AGENCY. THE STATE AGENCY SHALL CAUSE THE REIMBURSEMENT TO BE PAID TO THE DIVISION AND THE REIMBURSEMENT SHALL BE CREDITED TO THE STATE-OWNED MOTOR VEHICLE COMMUTER CASH FUND, WHICH IS HEREBY CREATED IN THE STATE TREASURY. MONEYS IN THE FUND SHALL BE APPROPRIATED TO THE DIVISION TO PAY THE OPERATING EXPENSES FOR THE STATE-OWNED MOTOR VEHICLE USED BY THE EMPLOYEE FOR COMMUTING, AND THE APPROPRIATION TO THE STATE AGENCY OR OTHER FUNDING FOR OPERATING EXPENSES FOR THE STATE-OWNED MOTOR VEHICLE SHALL BE REDUCED BY THE AMOUNT OF SUCH APPROPRIATION FROM THE FUND. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY MONEYS NOT APPROPRIATED BY THE GENERAL ASSEMBLY SHALL REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED OR REVERT TO THE GENERAL FUND AT THE END OF ANY FISCAL YEAR.

(b) (I) ~~Unless provided by rule, no exceptions shall be made to the reimbursement provisions of this subsection (4)~~ REIMBURSEMENT SHALL NOT BE REQUIRED IF THE DIVISION DETERMINES THAT THE EMPLOYEE IS DRIVING A CLEARLY MARKED POLICE OR FIRE VEHICLE OR OTHER QUALIFIED NONPERSONAL USE VEHICLE.

(II) THE EXCEPTION TO REIMBURSEMENT SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL NOT APPLY TO AN EMPLOYEE WHO IS NOT A COLORADO STATE PATROL OFFICER IF THE DIVISION DETERMINES THAT THE EMPLOYEE'S PRIOR USE OF A STATE-OWNED MOTOR VEHICLE FOR COMMUTING WAS FIFTY PERCENT OR MORE OF THE TOTAL MILES TRAVELED IN THE VEHICLE.

(c) THE STATE AGENCY SHALL CALCULATE AND REPORT THE TAXABLE BENEFIT ASSOCIATED WITH USING THE STATE-OWNED MOTOR VEHICLE FOR COMMUTING IF THE AMOUNT OF REIMBURSEMENT REQUIRED BY THIS SECTION FOR COMMUTING IS LESS THAN THE VALUE OF THE BENEFIT AS DETERMINED BY THE REGULATIONS ESTABLISHED BY THE INTERNAL REVENUE SERVICE.

(5) ON OR BEFORE OCTOBER 1, 2011, AND ON OR BEFORE OCTOBER 1 OF EACH YEAR THEREAFTER, THE DIVISION SHALL PROVIDE A REPORT TO THE JOINT BUDGET COMMITTEE THAT INCLUDES THE FOLLOWING INFORMATION:

(a) AN ESTIMATE OF THE AUTOMOBILE LEASE-VALUE RULE THAT WILL BE USED FOR THE NEXT STATE FISCAL YEAR TO DETERMINE THE REIMBURSEMENT OWED BY EACH EMPLOYEE PURSUANT TO THIS SECTION;

(b) THE NAME OF EACH EMPLOYEE AUTHORIZED TO USE A STATE-OWNED MOTOR VEHICLE FOR COMMUTING AND THE ESTIMATED REIMBURSEMENT TO BE PAID BY THE EMPLOYEE FOR THE NEXT STATE FISCAL YEAR, WHICH INFORMATION SHALL BE ORGANIZED BY DEPARTMENT, DIVISION, AND PROGRAM;

(c) FOR EACH EMPLOYEE IDENTIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (5), THE ANTICIPATED APPROPRIATION LINE ITEM IN THE ANNUAL GENERAL APPROPRIATION ACT AND FUNDING SOURCE THAT WILL BE USED TO PAY EXPENSES FOR THE STATE-OWNED MOTOR VEHICLE USED FOR COMMUTING;

(d) THE TOTAL PERCENTAGE OF MILES TRAVELED AND OPERATING COSTS FOR STATE-OWNED MOTOR VEHICLES ATTRIBUTED TO COMMUTING FOR EACH DEPARTMENT FOR THE PRIOR STATE FISCAL YEAR;

(e) THE TOTAL NUMBER OF EMPLOYEES FROM EACH DEPARTMENT WHO USED A STATE-OWNED MOTOR VEHICLE FOR COMMUTING DURING THE PRIOR STATE FISCAL YEAR WHO WERE NOT REQUIRED TO REIMBURSE THE STATE FOR SUCH USE; AND

(f) THE TOTAL OPERATING EXPENSES FOR EACH DEPARTMENT FOR THE PRIOR STATE FISCAL YEAR FOR STATE-OWNED MOTOR VEHICLES USED FOR COMMUTING.

(6) SUBSECTION (5) OF THIS SECTION IS EXEMPT FROM THE PROVISIONS OF SECTION 24-1-136 (11), AND THE PERIODIC REPORTING REQUIREMENT SHALL REMAIN IN EFFECT UNTIL CHANGED BY THE GENERAL ASSEMBLY ACTING BY BILL.

(7) THE DIVISION SHALL PROMULGATE, IN ACCORDANCE WITH

ARTICLE 4 OF THIS TITLE, ANY RULES NECESSARY FOR THE ADMINISTRATION OF THIS SECTION.

(8) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CLEARLY MARKED POLICE OR FIRE VEHICLE" SHALL HAVE THE SAME MEANING AS SET FORTH IN 26 CFR 1.274-5T (k) (3) OR ANY SUCCESSOR PROVISION.

(b) (I) "COMMUTING" MEANS DRIVING BETWEEN AN EMPLOYEE'S RESIDENCE AND:

(A) THE EMPLOYEE'S PRINCIPAL PLACE OF BUSINESS; OR

(B) TEMPORARY WORK LOCATIONS, IF SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) DOES NOT APPLY.

(II) "COMMUTING" DOES NOT INCLUDE DRIVING BETWEEN AN EMPLOYEE'S RESIDENCE AND:

(A) A LOCATION OTHER THAN THE EMPLOYEE'S PRINCIPAL WORKPLACE THAT IS IN RESPONSE TO AN EMERGENCY SITUATION; OR

(B) TEMPORARY WORK LOCATIONS, IF THE EMPLOYEE HAS AN OFFICE IN HIS OR HER RESIDENCE, WHICH OFFICE QUALIFIES AS A PRINCIPAL PLACE OF BUSINESS.

(c) "DIVISION" MEANS THE DIVISION OF CENTRAL SERVICES IN THE DEPARTMENT OF PERSONNEL.

(d) "EMPLOYEE" MEANS AN EMPLOYEE OF A STATE AGENCY AND INCLUDES AN OFFICER.

(e) "QUALIFIED NONPERSONAL USE VEHICLE" SHALL HAVE THE SAME MEANING AS SET FORTH IN 26 CFR 1.274-5T (k) (2) OR ANY SUCCESSOR PROVISION.

SECTION 3. 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.

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO