

# STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION  
Office of Policy and Government Relations  
4201 East Arkansas Avenue, Room 275  
Denver, Colorado 80222  
(303) 757-9772



**To:** Transportation Commission

**From:** Herman Stockinger, Transportation Commission Secretary

**Re:** Request to Open Transportation Commission Rules and Delegate Authority to an Administrative Hearing Officer to Preside Over a Public Rule-Making Hearing

**Date:** December 4, 2013

---

Summary: The Transportation Commission last updated its Rules Governing Practice and Procedures on November 14, 2011. The Commission recently determined that the election of officers should be changed from August to July. This necessitates a modification of the Commission Rules, and requires compliance with the Administrative Procedure Act pertaining to rule-making. The first step in this process is to develop a draft of the rules containing the proposed changes, open the rules and delegate authority to an Administrative Hearing Officer to preside over a public rule-making hearing.

1. Action Requested: The Department requests the Commission open the rule-making process and delegate authority to an Administrative Hearing Officer to preside over a public rule-making hearing.

2. Documents Included in this Agenda Submission

- A. Proposed changes to rules
- B. Proposed Resolution

3. Rationale: The Transportation Commission is granted authority pursuant to § 43-1-106(6), C.R.S. to “adopt rules in relation to its meeting and the transaction of its business.” Because rules have the effect of law, the Administrative Procedure Act, § 24-4-103, C.R.S., requires compliance with all steps of the rule-making process if any substantive change is made to rules.

Rule 3.6 currently states “Annual election of officers shall be the first order of business at the Commission’s regular August meeting.” The Commission has determined that it should hold the annual election officers at its July meeting to more closely match the timing of new incoming Commission appointments and the start of the Commission and new fiscal year. The Rules will also be reviewed for compliance with current formatting requirements for numbering and statutory citations.

Following notice to interested parties, an Administrative Hearing Officer, acting under a delegation of authority from the Commission, will hold a public rule-making hearing and make findings and recommendations to the Commission. If the Commission opens the Rules in December, the Commission will be requested to adopt the rules in March 2014, and the Rules will become effective April 30, 2014.

~~{This tracked changes document below reflects all substantive changes. Because this rule has not been updated in twenty years, the document was substantially reformatted. Reformatting changes are not reflected in the track changes and are considered non-substantive in nature.}~~

## COLORADO DEPARTMENT OF TRANSPORTATION

### Transportation Commission

#### 2 CCR 601-11

#### Rules Governing Practice and Procedures of the Transportation Commission of Colorado ~~GENERAL RULES OF PRACTICE AND PROCEDURE BEFORE THE TRANSPORTATION COMMISSION OF COLORADO~~

#### ~~1.0~~ Statement of Basis, Purpose, and Statutory Authority

~~1.1~~ ~~Basis and Purpose~~—The purpose of these rules is to set forth provisions governing the Transportation Commission’s actions, administrative practices, and transaction of business. The rules are being updated to make one substantive change to rule 3.6 (changing the annual election of officers from the August regular meeting to July) and to otherwise make numbering and other non-substantive changes.

~~1.2~~ ~~Statutory Authority~~—The ~~specific~~ authority under which the Transportation Commission of Colorado shall establish these rules is set forth in ~~§~~ 43-1-106(6) and § 43-1-106(8)(k), C.R.S. ~~(2010)~~.

#### ~~21.00~~ Definitions

~~2-41.01~~ “Ad Hoc Committee” shall mean a committee created by the Commission for the purpose of addressing a specific need of a non-continuous nature.

~~2-21.02~~ “Bridge Enterprise Board of Directors” shall mean a type 1 board as defined in § 24-1-105, C.R.S. ~~(2010)~~ and shall be comprised of the members of the Transportation Commission of Colorado pursuant to § 43-4-805(2) C.R.S. ~~(2010)~~.

~~21.03~~ “Commission” shall mean the Transportation Commission of Colorado.

~~21.04~~ “Department” shall mean the Colorado Department of Transportation.

~~21.05~~ “Executive Director” shall mean the Executive Director of the Colorado Department of Transportation.

~~21.06~~ “Headquarters” shall mean 4201 East Arkansas Avenue, Denver, Colorado 80222.

~~21.07~~ “HPT Board” shall mean the Board of Directors of the High Performance Transportation Enterprise pursuant to § 43-4-806(2)(a) C.R.S. ~~(2010)~~ which shall be a type 1 board as defined in § 24-1-105 C.R.S. ~~(2010)~~ and shall include three members of the Transportation Commission appointed by resolution of the Commission.

~~21.08~~ “Meeting” shall mean any kind of gathering convened to discuss public business, in person, by telephone, electronically, or by other means of communication pursuant to § 24-6-402(1)(b), C.R.S. ~~(2010)~~.

21.09 "Secretary" shall mean the Secretary of the Transportation Commission of Colorado.

21.10 "Standing Committee" shall mean a committee created by the Commission to address a general need of a continuous nature.

21.11 "State" shall mean the State of Colorado.

### **32.00 Commission Members – Elections – Appointments - Successions**

32.01 The Commission consists of eleven members, appointed by the Governor with the consent of the Senate for terms of four years. Each Commissioner shall reside in the district the Commissioner represents.

32.02 All members of the Commission shall take an oath of office prescribed by the constitution of the state for state officers and the oath shall be filed by the Secretary in the Office of the Secretary of State.

32.03 The members of the Commission and their successors shall constitute a body corporate to be known as the "Transportation Commission of Colorado"; shall have the power to adopt and use a common seal and to change and alter such seal at will; and shall have and exercise all powers necessarily incident to a body corporate.

32.04 All members of the Commission shall also serve as members of the Bridge Enterprise Board of Directors.

32.05 Three members of the Commission shall be appointed by Commission resolution to serve on the Board of Directors of the High Performance Transportation Enterprise.

32.06 Annual election of officers shall be the first order of business at the Commission's regular ~~August~~ July meeting. New officers shall commence their service in July.

32.07 The Commission shall elect a Chairman, Vice Chairman and Secretary to serve for one year or until successors are elected.

32.08 The Chairman shall preside at all regular meetings of the Commission. The Chairman shall be a member of the Commission.

32.09 The Vice Chairman, in the absence or disability of the Chairman shall perform the duties of the Chairman. The Vice Chairman shall be a member of the Commission.

32.10 In the absence or disability of the Chairman or Vice Chairman, the Commission shall elect from its members present a Chairman pro tempore who shall perform the duties of the Chairman for that meeting.

32.11 The Secretary shall assist the Chairman in conducting the meetings of the Commission and shall keep the books and records of the Commission. The Secretary shall be a member of the Department staff.

### **43.00 Committees of the Commission**

43.01 The Commission may create Standing Committees by full consent of the Commission as it deems necessary. As part of the annual election of officers, members shall be appointed by the Chairman, with the consent of the full Commission, to all existing Standing Committees; members so appointed shall serve for one year or until their

successors are appointed. The Commission has created the following Standing Committees:

**43.01.1** The Audit Review Committee (“ARC”), which shall be comprised of at least three members of the Commission who shall meet periodically with executive management and the Audit Director to review audits, reports and activities of the internal Audit Division. Any Commissioner may refer an audit or a report to the full Commission for consideration.

**43.01.2** The Disadvantaged Business Enterprises (“DBE”) Committee, which shall be comprised of at least four members of the Commission who shall meet periodically with executive management and the DBE program administrator to review the DBE program.

**43.01.3** The Safety Committee, which shall be comprised of at least four members of the Commission who shall meet periodically with executive management to review the safety program.

**43.01.4** The Transit and Intermodal Committee (“T&I Committee”), which shall be comprised of at least four members of the Commission who shall meet periodically with executive management and the Division of Transit and Rail Director to review transit and rail policies and practices.

**43.01.5** The Efficiency and Accountability Committee, which shall seek ways to maximize the efficiency of the Department to allow increased investment in the transportation system over the short, medium, and long term.

A. Membership shall include, from state government:

1. One member of the Commission designated by the Commission;
2. One member of the Office of the Executive Director designated by the Executive Director;
3. One member from each of the divisions of the Department created in section § 43-1-104(1) C.R.S. ~~(2010)~~ designated by the Executive Director after consultation with the directors of each division; and
4. Any other employees of the Department the Executive Director may designate.

B. Membership shall include, from outside state government, representatives of:

1. The construction Industry;
2. The engineering industry;
3. The environmental community;
4. Transportation planning organizations;
5. Public transportation providers; and
6. Any other industries or groups that the Commission determines

should be represented on the committee.

C. The Efficiency and Accountability Committee shall periodically report to the Commission and the Executive Director regarding means by which the Commission and the Department may execute their duties more efficiently. The Executive Director or the Director's designee shall report at least once per calendar year to either the committees of the House of Representatives and the Senate that have jurisdiction over transportation or the Transportation Legislation Review Committee regarding their activities and recommendations and any actions taken by the Commission or Department to implement recommendations of the committee.

**43.02** The Chairman, with the consent of a majority of the Commission members, may appoint Ad Hoc Committees as deemed necessary to provide for the efficient conduct of the Commission's business; such committees shall serve at the pleasure of the Chairman.

**54.00 Commission Attendance and Notice to Commission of Scheduled Meetings**

**54.01** Each Commissioner is encouraged to attend the following:

**54.01.1** All meetings and hearings of the Commission.

**54.01.2** All meetings or gatherings of private groups or associations at which Commission representation is requested.

**54.01.3** All organized official field trips of the Commission.

**54.01.4** All meetings of the Department and private companies, groups or governmental entities which the Commissioner attends at the request of the Chairman or the Executive Director.

**54.01.5** All Commission meetings with Legislators, the Joint Budget Committee, the House Transportation and Energy Committee, and the Senate Transportation Committee.

**54.01.6** All meetings of any standing or Ad Hoc Committee to which a Commissioner is appointed.

**54.01.7** All meetings a Commissioner is assigned to attend as a representative of the Commission.

**54.02** All absences of Commissioners at a meeting or hearing shall be noted by the Secretary in the minutes of any meeting or hearing of the Commission. Commissioners are encouraged to notify the Secretary or Chairman in advance of any meeting or hearing if they will be unable to attend or if they will be absent from a portion of the meeting or hearing.

**54.03** If a Commissioner does not answer roll call at the beginning of the meeting, that Commissioner shall be deemed absent unless excused by the Chairman or -his or her subsequent arrival is noted in the minutes.

**54.04** Except under special or emergency circumstances, the Secretary will provide to the Commission copies of material pertaining to items that require action within seven days of the meeting.

~~64.05~~ Special meetings may be called by the Governor, the Executive Director, the Chairman or a majority of the members of the Commission. The Secretary shall provide notice of any special meeting to the Commission by mail or electronic mail no less than three days prior to the date of any special meeting. However, in case of emergency, a 24-hour notice shall be given by telephone or electronic mail. See § 43-1-106(6) C.R.S. ~~(2010)~~.

#### ~~65.00~~ **Schedule of Meetings – Meeting Location**

~~65.01~~ Except as provided in this section, regular meetings of the Commission shall be held on the third Thursday of each month and no less than eight times a year.

~~65.02~~ A schedule of regular meetings of the Commission shall be established and adopted each December for the upcoming year. By Commission action any such scheduled meeting may be canceled or rescheduled.

~~65.03~~ The Chairman of the Commission may propose postponement or advancement of the time and date of any regular meeting for Commission action and the Chairman may remove items from the agenda or rearrange the order of the agenda items.

~~65.04~~ The Commission meetings shall be held at ~~h~~Headquarters or at other locations throughout the state. The Commission will consider holding one-third of its meetings outside the Denver area to enable persons throughout the state to attend its meetings and express their opinions to the Commission.

#### ~~76.00~~ **Public Notice of Meetings**

~~76.01~~ Public Notice of Commission meetings will be given as provided for in the Colorado Sunshine Act of 1972 (§ 24-6-401, *et seq.* C.R.S. ~~(2010)~~).

~~76.02~~ All meetings of two or more members of the Commission at which public business is discussed or at which any formal action may be taken are declared to be public meetings and shall be open to the public at all times, excluding the convening of an executive session pursuant to Rule 8.8. See 24-6-402(2)(a) C.R.S. ~~(2010)~~.

~~76.03~~ Any meetings at which the adoption of any proposed policy, position resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the Commission is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. See § 24-6-402(2)(c) C.R.S. ~~(2010)~~.

~~76.04~~ The Commission shall be deemed to have given full and timely notice if the notice of the meeting is posted in the lobby of CDOT Headquarters, 4201 E. Arkansas Ave, Denver, CO 80222, and on CDOT's website, no less than twenty-four hours prior to the holding of the meeting.

~~76.05~~ In addition to the provisions of ~~76.04~~ of this rule, public notice of the regular meeting date and proposed agenda shall be posted by the Secretary at the front entrance of the Headquarters and on CDOT's website at least five days prior to the meeting, or as soon as practicable.

#### ~~87.00~~ **Conduct of Meetings – Matters Coming Before the Commission**

~~87.01~~ In any lawsuit or proceedings, all meetings of the Commission shall be presumed to have been duly called and regularly held.

**87.02** Except for matters to be considered by the Commission in Executive Session pursuant to § 24-6-402(3)(a) or ~~§ 24-6-402(3)(b)~~, C.R.S. ~~(2010)~~, all meetings of the Commission shall be open to the public and shall be conducted by the Chairman generally under Robert's Rules of Order, but may proceed on an informal basis.

**87.03** A quorum of the Commission shall be six members. If a quorum of the Commission is present, a majority vote of the members present shall be required to carry any motion, order, regulation or other action of the Commission.

**87.04** All formal action of the Commission shall be by resolution adopted at a regular or special meeting of the Commission as required by statute.

**87.05** All resolutions originated by Department staff which contain a legal conclusion or require a legal determination must be approved as to legality and form by the Chief Transportation Counsel or designee before being accepted as an action item on a Commission meeting agenda.

**87.06** Persons or groups wishing to make a presentation at a Commission meeting or hearing may make a request to be placed on the agenda by contacting the Secretary in writing at 4201 East Arkansas Avenue, Room 270, Denver, Colorado 80222 at least 17 days prior to the meeting. The public is encouraged to participate at these meetings.

**87.07** Items which are not included or identified as action items in the public notice of the Commission meeting agenda may, nonetheless, be considered by the Commission for action at the noticed meeting on an emergency basis, provided that the items must be approved for action by either the Chairman or a majority of the Commissioners and that the Secretary must post public notice of such additional action items in accordance with the provisions of Section ~~76.00~~ of this rule.

**87.08** Upon the announcement by the Commission to the public of the topic for discussion and after providing as much detail as possible without compromising the purpose for which the executive session is authorized, and by the affirmative vote of two-thirds of its members, the Commission may hold an Executive Session at a regular or special meeting for the sole purpose of considering any of the matters described in § 24-6-402(3)(a) or ~~§ 24-6-402(3)(b)~~ C.R.S. ~~(2010)~~. No adoption of any proposed policy, position, resolution, rule, regulations, or formal action, except the review, approval, and amendment of the minutes of an executive session shall occur at any executive session that is not open to the public.

#### **98.00 Records - Minutes**

**98.01** All meetings of the Commission shall be electronically recorded. The audio files shall be kept permanently by the Secretary.

**98.02** The Secretary shall make and maintain minutes of all Commission meetings. Minutes shall be written in the order in which the issues were considered at the meeting, shall be prepared promptly, and shall be open to public inspection. Minutes of each meeting shall state, by name, the Commissioners that are either present or absent and all Department executive management that are present.

**98.03** Minutes shall include all matters considered and action taken, if any, but need not be a verbatim transcript. The minutes shall reflect the number of yea and nay votes on each action item and shall state by name the Commissioners voting yea or nay, if there is a division of the vote.

Formatted: Font: Not Bold

98.04 Minutes of any meeting shall be approved, rejected or modified at the next regular meeting. After approval or modification, minutes shall be signed by the Secretary and made a part of the Commission's records. A copy of the signed minutes of any Commission meeting shall be available to the public upon request.

98.05 The minutes and records of the Commission, books of account, and the seal of the Commission shall be kept in the office of the Secretary and shall be open to public inspection.

98.06 The Secretary will furnish sign-in sheets for all meetings of the Commission. They will be available at the door of the meeting room.

#### **409.00 Compensation – Reimbursement of Expenditures**

409.01 Pursuant to § 43-1-106 (6), C.R.S. ~~(2010)~~ each member of the Commission shall receive seventy-five dollars per day for each regular or special meeting of the Commission actually attended and shall be reimbursed for his or her necessary expenses incurred in the discharge of such member's official duties and in accordance with Fiscal Rules and Commission policy.

409.02 Mileage rates for necessary travel shall be computed in accordance with § 24-9-104, C.R.S. ~~(2010)~~, as amended.

#### **140.00 Standards of Conduct – Conflicts of Interest – Disclosure**

140.01 A conflict of interest occurs whenever a Commissioner has privileged information or a financial interest which may influence or be reasonably perceived by the public as influencing the conduct of the Commissioner.

140.02 A Commissioner holds a position of public trust and has a fiduciary duty to carry out his or her duties for the benefit of the people of the state in a manner consistent with the applicable standards of conduct of § 24-18-101 through § 24-18-206 C.R.S. ~~(2010)~~. Each Commissioner shall comply with such standards, as follows:

140.02.1 A Commissioner shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which he has a direct or substantial financial interest.

140.02.2 "Financial interest" means a substantial interest held by an individual which is:

- (1) An ownership interest in a business;
- (2) A creditor interest in an insolvent business;
- (3) An employment or a prospective employment for which negotiations have begun;
- (4) An ownership interest in real or personal property;
- (5) A loan or any other debtor interest; or
- (6) A directorship or officership in a business.

**140.03** However, a Commissioner may, prior to acting in a manner described above which may impinge on his or her fiduciary duty and the public trust, disclose the nature of his or her private interest in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his or her services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his or her interest. If he or she then performs the official act involved, he or she shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction.

**121.00 Adoption of Rules and Regulations**

**121.01** All rulemaking proceedings authorized by law to be conducted by the Commission, or by a designee on behalf of the Commission, shall be conducted in accordance with the State Administrative Procedure Act ("APA"), § 24-4-101 *et seq.*, C.R.S. ~~(2010) as amended.~~

**132.00 Commission Adjudicatory Hearings**

**132.01** Adjudicatory hearings may be conducted by the Commission on any issues within the Commission's jurisdiction or the hearing may be delegated by the Commission either to an Administrative Law Judge, in the Division of Administrative Hearings, Department of Administration, or to the Department of Transportation's Executive Director to act as the Hearing Officer. Hearings shall be conducted in accordance with the State Administrative Procedure Act ("APA") § 24-4-101, *et seq.* C.R.S. ~~(2010)~~, unless the Commission's or the Department of Transportation's enabling legislation provides otherwise.

**132.02** In cases where the Department conducts adjudicatory hearings, either through the Executive Director or his designee, which may be but shall not be limited to the Chief Engineer or an Administrative Law Judge. The Executive Director, or his or her designee, shall file a written report with the Commission for review setting forth the evidence and the findings and the application of the findings to statutes and rules. Upon review, the Commission may then sustain findings or make new findings based upon the record.

**Resolution # TC -**

**Open Rule-Making Regarding Revisions to the General Rules of Practice and Procedure before the Transportation Commission of Colorado, 2 CCR 601-11 and Delegate Authority to an Administrative Hearing Officer to Hold a Public Rule-Making Hearing.**

**WHEREAS**, § 43-1-106(6) and § 43-1-106(8)(k) C.R.S. authorize the Transportation Commission of Colorado (the “Commission”) to promulgate rules in relation to its meetings and the transaction of business; and

**WHEREAS**, the current Commission rules were last updated on November 14, 2011; and

**WHEREAS**, the Commission has determined that it will elect officers annually in July rather than August, requiring a change to Rule 3.6; and

**WHEREAS**, other minor modifications will be made to the Rules, including revising numbering and statutory citation; and

**WHEREAS**, following the measures taken by the Department to comply with the Administrative Procedure Act, the proposed Rules will be submitted to the Commission for approval and adoption.

**NOW THEREFORE BE IT RESOLVED**, the Transportation Commission herein opens the rule-making process and delegated authority to an administrative hearing officer to preside over a public rule-making hearing on the modifications to the Rules.

\_\_\_\_\_  
Transportation Commission Secretary

\_\_\_\_\_  
Date