



COLORADO

Transportation Commission

4201 East Arkansas Avenue, Room270
Denver, CO 80222-3406

DATE: July 21, 2016
TO: Transportation Commission
FROM: Mary Frances Nevans / Herman Stockinger
SUBJECT: Authorize Commencement of Rule-Making by Opening the Commission Rules, 2 CCR 601-11.

Purpose

To authorize the Department to commence the rule-making process by opening the Rules Governing Practice and Procedures of the Transportation Commission of Colorado (“Commission Rules”), 2 CCR 601-11.

Action

To pass a resolution authorizing the Department to commence rule-making by opening the Rules Governing Practice and Procedures of the Transportation Commission of Colorado (“Commission Rules”), 2 CCR 601-11, and delegate authority to an Administrative Hearing Officer to conduct a public hearing.

Background

CDOT has 22 sets of rules; of these, the Commission has statutory authority to promulgate 13 sets; the remaining 9 sets are under the authority of the Executive Director. The Commission Rules are under the authority of the Commission. Because administrative Rules have the force of law, any change in wording must follow the full process set forth in the Administrative Procedure Act. The many steps in this process include: requesting that stakeholders review the rule changes, requesting the Commission open the rule making process, gathering public input, holding a hearing, the Administrative Hearing Officer recommending a course of action to the Commission, requesting the Commission adopt the rules, and finally, requesting review by the Attorney General’s Office.

Details

The Commission Rules were last updated on April 14, 2014. The proposed amendments to the Commission Rules are primarily a result of the passage of HB16-1172, which reestablished the Efficiency and Accountability Committee, clarified its role, and expanded its membership. The proposed amendments include:

- 1) Conforming the Commission Rules to HB 16-1172, which amended § 43-1-106(17), C.R.S. See Rule 3.01.5.
- 2) Changing the name of the Disadvantaged Business Enterprise (“DBE”) Committee to the Small Business and Diversity (“SBD”) Committee. See Rule 3.01.2.
- 3) Clarifying that the annual election of officers will be the last order of business at the regular June meeting, and stating that the elected officers’ terms will begin on July 1 and expire on June 30 of the following year. See Rule 2.06.
- 4) Changing the number from four to at least three Commission members on committees. See Rules 3.01.1, 3.01.2, 3.01.3, and 3.01.4.



Key Benefits

The proposed changes in the Commission Rules align with HB 16-1172, clarify the election of officers, make the Commission membership on standing committees consistent, and clarify current practice.

Options and Recommendations

- 1) Authorize the Department to open the Rules and delegate authority to an Administrative Hearing Officer to hold a public rule-making hearing (staff recommendation);
- 2) Defer the decision to open the rules pending the provision of additional information; or
- 3) Decline to open the rules at this time.

Attachments

Resolution

Red-line copy of Rules showing proposed amendments



Resolution # TC-

Open Rule-Making and Delegate Authority to an Administrative Hearing Officer to Conduct a Public Rule-Making Hearing Regarding Amendments to the Rules Governing Practice and Procedures of the Transportation Commission of Colorado (“Commission Rules”), 2 CCR 601-11.

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

WHEREAS, the proposed amendments to the Commission Rules are primarily based on statutory changes resulting from legislation in 2016 (HB 16-1172) which amended § 43-1-106(17), C.R.S.; and

WHEREAS, the Commission has the authority to conduct a rule-making hearing or to delegate the authority to an Administrative Hearing Officer for the purposes of conducting the rule making hearing, making a complete procedural record of the hearing, and submitting that record and any recommendations to the Commission for its review and action concerning amendment to the Commission Rules; and

WHEREAS, the Department recommends the Commission Rules be amended to conform to the statutory language in the above referenced legislation; and

WHEREAS, proposed amendments of the Commission Rules further effectuate Governor Hickenlooper’s Executive Order 2012-002, which directs all state agencies to review and update any existing rules to confirm that they are effective, efficient and essential; and

NOW THEREFORE BE IT RESOLVED, the Commission authorizes staff to prepare a draft of the amended Rules, and to take all necessary actions in accordance with the State Administrative Procedure Act to initiate rule-making for the purpose of amending the Rules Governing Practice and Procedures of the Transportation Commission of Colorado, 2 CCR 601-11.

BE IT FURTHER RESOLVED, the Commission delegates its authority to conduct the rule-making hearing to a CDOT Administrative Hearing Officer to prepare a complete record of the hearing and forward said record and Rules to the Commission for consideration and adoption of the Rules.

Herman Stockinger, III
Transportation Secretary

Date

DEPARTMENT OF TRANSPORTATION

Transportation Commission

Rules Governing Practice and Procedures of the Transportation Commission of Colorado

2 CCR 601-11

Statement of Basis, Purpose, and Statutory Authority

The purpose of these rules is to set forth provisions governing the Transportation Commission's actions, administrative practices, and transaction of business. In 2014, the rules ~~are being~~ were updated to make one substantive change to rule 2.06 (changing the annual election of officers from the August regular meeting to July) and to otherwise make numbering and other non-substantive changes. In 2016, the rules were updated to change the name of the Disadvantaged Business Enterprises ("DBE") Committee to Small Business and Diversity ("SBD") Committee, clarify the timeline of the election of Commission officers, and clarify the role and expand the membership of the Efficiency and Accountability Committee.

The 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.

1.00 Definitions

- 1.01 "Ad Hoc Committee" shall mean a committee created by the Commission for the purpose of addressing a specific need of a non-continuous nature.
- 1.02 "Bridge Enterprise Board of Directors" shall mean a type 1 board as defined in § 24-1-105, C.R.S., and shall be comprised of the members of the Transportation Commission of Colorado pursuant to § 43-4-805(2) C.R.S.
- 1.03 "Commission" shall mean the Transportation Commission of Colorado.
- 1.04 "Department" shall mean the Colorado Department of Transportation.
- 1.05 "Executive Director" shall mean the Executive Director of the Colorado Department of Transportation.
- 1.06 "Headquarters" shall mean ~~4201 East Arkansas Avenue, Denver, Colorado 80222~~the Colorado Department of Transportation's headquarters building, the address for which is provided on the Colorado Department of Transportation's website.
- 1.07 "HPTE Board" shall mean the Board of Directors of the High Performance Transportation Enterprise pursuant to § 43-4-806(2)(a), C.R.S., which shall be a type 1 board as defined in § 24-1-105, C.R.S., and shall include three members of the Transportation Commission appointed by resolution of the Commission.
- 1.08 "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.
- 1.09 "Secretary" shall mean the Secretary of the Transportation Commission of Colorado.

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

1.11 "State" shall mean the State of Colorado.

2.00 Commission Members – Elections – Appointments - Successions

2.01 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.

2.02 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.

2.0.3 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.

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

2.05 Three members of the Commission shall be appointed by Commission [ratifying](#) resolution to serve on the Board of Directors of the High Performance Transportation Enterprise.

2.06 Annual election of officers shall be the ~~first-last~~ order of business at the Commission's regular ~~July-June~~ meeting. [The elected officers' terms shall begin on July 1, and expire on June 30 of the following year.](#)

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

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

2.09 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.

2.10 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.

2.11 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.

3.00 Committees of the Commission

3.01 The Commission may create Standing Committees by full consent of the Commission as it deems necessary. ~~As part of the annual election of officers, m~~Members shall be appointed by the Chairman, with the consent of the full Commission, to all existing Standing Committees. ~~;~~ ~~m~~Members so appointed shall [begin serving by the July regular meeting on the respective Committees and](#) serve for one year or until their successors are appointed. [The Commission shall ratify the appointments of members to Standing Committees by resolution.](#)

The Commission has created the following Standing Committees:

- 3.01.1 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.~~ Note: Deleted this because Policy Directive 4.0 "Audit Division Policy and Charter" fully addresses this issue.
- 3.01.2 The ~~Small Business and Diversity ("SBD") Disadvantaged Business Enterprises ("DBE")~~ Committee, which shall be comprised of at least ~~four~~three members of the Commission who shall meet periodically with executive management and the ~~DBE Director of the Civil Rights and Business Resource Center program administrator~~ to review the ~~DBE civil rights and small business~~ programs. Note: This change was made at the request of the Small Business and Diversity Committee, which wished to change its name. Also, four members was changed to at least three. Finally, the title of the director of the civil right office was updated.
- 3.01.3 The Safety Committee, which shall be comprised of at least ~~four~~three members of the Commission who shall meet periodically with executive management to review the safety program. Note: see above
- 3.01.4 The Transit and Intermodal Committee ("T&I Committee"), which shall be comprised of at least ~~four~~three 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. Note: see above
- 3.01.5 The Efficiency and Accountability Committee, ~~which shall seek ways to maximize the efficiency and accountability of the Department and the Transportation Commission~~ which is reestablished pursuant to § 43-1-106(17)(a), C.R.S., which shall seek ways to maximize the efficiency and accountability of the Department and the Transportation Commission to allow increased investment in the transportation system over the short, medium, and long term, in compliance with § 43-1-106(17)(a), C.R.S. Note: this language is in the statute and remained unchanged in House Bill 16-1172. "Accountability" and "Transportation Commission" was added.
- A. Membership shall include, from the Executive Branch of the 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., 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 the Legislative Branch of the State government:
1. Two members of the House of Representatives, one appointed from the majority party by the speaker of the House of Representatives and one appointed from the minority party by the minority leader of the House of Representatives, pursuant to § 43-1-106(17); and

2. Two members of the Senate, one appointed from the majority party by the president of the Senate and one appointed from the minority party by the senate minority leader, pursuant to § 43-1-106(17). From House Bill 16-1172.

B.C. 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. Counties; From House Bill 16-1172
7. Municipalities; From House Bill 16-1172
8. Nonpartisan good governance organizations; From House Bill 16-1172
9. Any other industries or groups that the Commission determines should be represented on the committee; ~~and-~~
10. Any individuals or representatives of informally constituted groups of individuals that the Commission determines should be represented on the Committee. From House Bill 16-1172

D.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.

E. A member of the Efficiency and Accountability Committee who has a personal or private interest that could reasonably be expected to be affected if the Commission or the Department implements a proposed Committee recommendation shall disclose the interest to the Committee and shall abstain from any Committee vote to adopt or reject the recommendation. This is a new provision added by House Bill 16-1172.

3.02 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.

4.00 Commission Attendance and Notice to Commission of Scheduled Meetings

4.01 Each Commissioner is encouraged to attend the following:

4.01.1 All meetings and hearings of the Commission.

- 4.01.2 All meetings or gatherings of private groups or associations at which Commission representation is requested.
 - 4.01.3 All organized official field trips of the Commission.
 - 4.01.4 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.
 - 4.01.5 All Commission meetings with Legislators, the Joint Budget Committee, the House Transportation and Energy Committee, and the Senate Transportation Committee.
 - 4.01.6 All meetings of any standing or Ad Hoc Committee to which a Commissioner is appointed.
 - 4.01.7 All meetings a Commissioner is assigned to attend as a representative of the Commission.
- 4.02 All absences of Commissioners at a meeting or hearing [of the Commission](#) 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.
 - 4.03 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.
 - 4.04 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.
 - 4.05 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.
- 5.00 Schedule of Meetings – Meeting Location**
- 5.01 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.
 - 5.02 A schedule of regular meetings of the Commission shall be established and adopted each ~~December-July~~ for [the upcoming such fiscal](#) year. ~~By Commission action any such scheduled meeting may be canceled or rescheduled. Deleted because unnecessary, and changed the calendar year to fiscal year to align w/ Department business.~~
 - 5.03 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.
 - 5.04 The Commission meetings shall be held at Headquarters or at other locations throughout the state. The Commission will consider holding ~~one-third at least two~~ of its meetings [per 12-month period](#) outside the Denver area to enable persons throughout the state to attend its meetings and express their opinions to the Commission.

6.00 Public Notice of Meetings

- 6.01 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.).
- 6.02 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 7.08. See 24-6-402(2)(a), C.R.S.
- 6.03 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.
- 6.04 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 and on CDOT's website, no less than twenty-four hours prior to the holding of the meeting.
- 6.05 In addition to the provisions of 6.04 of this rule, public notice of the regular meeting date and proposed agenda shall be posted by the Secretary in the lobby of the Headquarters and on CDOT's website at least five days prior to the meeting, or as soon as practicable.

7.00 Conduct of Meetings – Matters Coming Before the Commission

- 7.01 In any lawsuit or proceedings, all meetings of the Commission shall be presumed to have been duly called and regularly held.
- 7.02 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., 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.
- 7.03 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.
- 7.04 All formal action of the Commission shall be by resolution adopted at a regular or special meeting of the Commission as required by statute.
- 7.05 All resolutions originated by Department staff which require a legal determination must be approved as to legality and form by the Office of the Attorney General or its designee before being accepted as an action item on a Commission meeting agenda.
- 7.06 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 CDOT Headquarters 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.
- 7.07 The Secretary will furnish sign-in sheets for public comment at all meetings of the Commission. They will be available at the door of the meeting room. Moved this from 8.06 below, and added redline.

7.087 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 6.00 of this rule.

7.098 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.. 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.

8.00 Records - Minutes

8.01 All meetings of the Commission shall be electronically recorded. ~~The audio files shall be kept permanently by the Secretary.~~ This was moved to Rule 8.06 below.

8.02 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.

8.03 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.

8.04 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.

8.05 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.

~~8.06 The Secretary will furnish sign-in sheets for all meetings of the Commission. They will be available at the door of the meeting room.~~ Moved to new 7.07 above.

8.06 The Commission shall retain records in keeping with the requirements of § 24-80-101, et seq., C.R.S.; however, with regard to the electronic recording of executive sessions, the records shall be kept for ninety days pursuant to § 24-6-402(2)(d.5)(I)(E), C.R.S. Note: we added this because the 90-day period for keeping executive session recordings were not a part of the rules, even though it was in the statute, and to clarify that other records should be retained appropriately. The audio files shall be kept permanently by the Secretary. We moved this from 8.01 above because it relates to record retention.

9.00 Compensation – Reimbursement of Expenditures

9.01 Pursuant to § 43-1-106 (6), C.R.S., 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.

9.02 Mileage rates for necessary travel shall be computed in accordance with § 24-9-104, C.R.S., as amended.

10.00 Standards of Conduct – Conflicts of Interest – Disclosure

10.01 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.

10.02 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. Each Commissioner shall comply with such standards, as follows:

10.02.1 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.

10.02.2 "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.

10.03 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.

11.00 Adoption of Rules and Regulations

11.01 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. .

12.00 Commission Adjudicatory Hearings

12.01 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., unless the Commission's or the Department of Transportation's enabling legislation provides otherwise.

- 12.02 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.