

Transportation Commission of Colorado
Regular Meeting Minutes
July 17, 2014

Chairman Ed Peterson convened the meeting at 9:05am in the auditorium of the headquarters building in Denver, Colorado.

PRESENT WERE: Ed Peterson, Chairman, District 2
Kathy Connell, Vice Chairman, District 6
Shannon Gifford, District 1
Gary Reiff, District 3
Kathy Gilliland, District 5
Sidny Zink, District 8
Les Gruen, District 9
Steven Hofmeister, District 11

EXCUSED: Heather Barry, District 4
Doug Aden, Chairman, District 7
Bill Thiebaut, District 10

ALSO PRESENT: Scot Cuthbertson, Deputy Executive Director
Gary Vansuch, Director of Process Improvement
Debra Perkins-Smith, Director of Division of Transportation
Josh Laipply, Chief Engineer
Heidi Humphreys, Director of Admin & Human Resources
Barb Gold, Audit Director
Amy Ford, Public Relations Director
Scott Richrath, CFO
Herman Stockinger, Director of Policy and Government Relations
Mike Cheroutes, Director of HPTE
Mark Imhoff, Director of Division of Transit and Rail
Ryan Rice, Director of the Operations Division
Darrell Lingk, Director of the Office of Transportation Safety
Tony DeVito, Region 1 Transportation Director
Tom Wrona, Region 2 Transportation Director
Dave Eller, Region 3 Transportation Director
Kerrie Neet, Region 5 Transportation Director
Kathy Young, Chief Transportation Counsel
John Cater, FHWA
Vince Rogalski, Statewide Transportation Advisory Committee (STAC)

AND: Other staff members, organization representatives,
the public and the news media

An electronic recording of the meeting was made and filed with supporting documents in the Transportation Commission office.

Audience Participation

Colorado State Senator Matt Jones stated that he represents Louisville, Longmont, Lafayette and part of Erie. He wanted to speak on I-70 East process and the HPTE process. He stated that he appreciated the Commission's service, which he has expressed at other times, including confirmations. He stated these are Coloradans' roads and their money. They deserve to have a real voice in the process and the outcome. The staff decision to recommend one HPTE option was decided prior to the public meeting required in the Executive Order and that would have been required in the bipartisan bill. After all the fallout over the handling of the US36, it appears that little has really changed.

He stated that he wanted to speak briefly about the public participation process and the Value for Money study. He asked what public participation was about and stated that he used to do that professionally as part of an international organization that facilitated this. He stated that there are two purposes. The first is to inform people, and the second is to listen and be open to change, look for good ideas to incorporate.

In the June 19 memo written for the previous Commission meeting, it stated that staff would recommend one option to the Commission (Design – Build – Finance – Operate – Maintain [DBFOM]) before the public meeting had even been held. He stated that he and other legislators were concerned because he had been told that this was not final and no decisions had been made. He stated that once the decision has been referred to the HPTE the chance of it not being done is significantly diminished, and he stated the public needed to know that. He attended the public hearing and did not hear once about the current meeting and the current decision. He stated that he may have missed it, but the people there did not know that the Commission would be making a big decision today, not the final decision but a decision that will be hard to reverse. He stated that the following day the agenda was already posted for the current meeting, and there was a memo with the staff recommendation for the Commission to proceed with the single option. That memo had to have been written before the town hall occurred and before the people were listened to.

He then stated that the Value for Money study looked like it had been written by a contractor for a contractor. It played up all the positives, and the drawbacks were not monetized in the study. For instance, he asked what the cost of a potential bankruptcy would be. He asked what the cost would be to a citizen trying to determine what was going on with I-70 and trying to figure out how HPTE fits into the equation. He asked what the cost of policy changes that would be stopped because the state previously entered a 40- or 50-year contract. This was discussed at the town hall, but it was not specific to the issue that the Commission will decide at the current meeting. He then stated that the biggest flaw is that this entire process says that private contractors can oversee this project better than CDOT. He stated that he had confidence in CDOT, the Department that brought TREX early and under budget and fixed all the flood damage by December 1, 2013, when no one thought it was possible. He stated that he believed CDOT could do this project but that the study says that CDOT cannot.

He stated that he spoke to staff and his Commissioner as soon as he saw the memo. He stated that he believed CDOT was in a place to make some of the same mistakes

that were made on US 36 but that the Commission was still able to avoid those mistakes. He asked the Commission to delay the decision rather than making it at the current meeting. He asked the Commission to look at the analysis and make it a balanced analysis. He asked them to hold a town hall to discuss this specific issue. He stated that he has heard no decision has been made but that the truth is the Commission is making a very big decision. He stated that those decisions would delay things and possibly hurt the project. But he stated that if this is the New Era in transportation, as it says in the materials, then more companies will come into competition, which means that there is no rush to make these decisions. He stated that the more important issue right now is to listen to the people who are going to be affected the most, think about what they say, not pre-judge it and not run a process to act like people are being listened to when they are not being listened to. He stated that those were his requests to the Commission today.

He stated that a staff member gave him the new, red-lined resolution. He stated that those changes increased a 5% chance that the decision may be reversed to a 7% or 8% chance that the decision will be reversed. This is a huge decision that the public did not know about and deserved to know about. These are their roads. They need to have a meaningful voice in this process.

Commissioner Reiff stated that he has tremendous respect for Senator Jones. He stated that the language added to the resolution belonged to himself from the HPTE meeting the previous day. He stated that he does not want to pre-judge the public process. He understands the need to start a process because if nothing is started, it is hard to get anywhere. However, he stated that he wants it to be perfectly clear in the resolution that as one Commission he does not believe this is a foregone conclusion. However, it is necessary to start a process but as a Commission he will want to hear the final analysis and hear the input as the process progresses. He wants to be absolutely clear that the Commission can retract the referral and modify the decision. He stated that he believed that needed to be expressed in the resolution. He stated that he heard the Senator's concerns and to some degree shared those concerns. He stated that he has already started the conversation with Director Cheroutes about whether the finance part of the DBFOM is right now. He stated it must be looked at as an economic issue. He stated that as a Commissioner and as a Board member of HPTE, he has not pre-judged this issue. He stated that he appreciates the Senator's time and comments.

Senator Jones stated that he appreciated Commissioner Reiff's comments but that everyone knows how these things work. He stated that he had worked in government for most of his life as a staff member and as a legislator. He stated that when a staff member makes a referral, that staff member should be relatively certain that their recommendation is going to happen. Once that recommendation is "sanctified" by the decision-making body, the difficulty in reversing that is huge, probably around 5%. The fact is that only one alternative is being recommended for study. He stated that it would not be such an issue if it was Design-Build through HPTE or Design-Build through the Department as has been traditionally done and like TREX was done. This is setting a course to dial in on a single option that the people in the public hearing or on the telephone town hall likely did not understand. This is a very big decision that should have been told to the public, and there should have been an entire open house around this one issue. He stated that people are going to get upset because they came to the town hall and were not informed about this big decision. He stated

this is US 36 all over again. He stated that he asked himself why he is still going after this topic because US 36 is done. He is happy to have the road, but he is not happy with the financing and the way that the financing happened. These are the public's roads. This is our responsibility to do this right. To do this right, this decision needs to be delayed and the people need to be told exactly what is going on. Then they need to be listened to. The financing will be 30, 40, 50, 60 years. They need to be given the opportunity to have a real opinion, and CDOT needs to be open to changing theirs. He stated that he appreciated the change in the resolution but it has to be much bigger than that. The prejudgment of the outcome before the public meeting will haunt the Commission. People will be angry, and he only wants to give people a voice. He thanked the Commission for their time and service.

Chairman Peterson stated that since this was a time for public comment, there would not be discussion. He did want to give Commissioner Reiff an opportunity to comment as the author of the changes to the resolution. He thanked Senator Jones for taking the time to address the Commission. He stated that the Commission takes these comments very seriously.

Individual Commissioner Comments

Commissioner Gifford stated that most of the work she has done for the last month has been meeting with individual council members with CDOT staff to discuss the financing plan for I-70E. This is a complex subject, so people needed a time to familiarize themselves with it. She stated that she thought the process was further along than it seems to be currently. CDOT has gotten good feedback from the council members and from the recent public meeting.

Commissioner Connell thanked the staff and the chairman for putting together the retreat for the Commission the two previous days.

Chairman Peterson thanked everyone who participated in the retreat. He stated that there was much accomplished. This will be great year full of challenges and full of opportunities. He is excited about the level of engagement between the staff and the Commission. He appreciates the dedication of the organization and the other Commissioners.

Executive Director's Report

Commissioner Peterson stated that Executive Director Don Hunt was traveling during the meeting but left comments to be included under the Executive Director's report. Commissioner Peterson read those comments:

He thanked Henry Sobanet for attending the meeting to brief the Commission on Senate Bill 228. A TC workshop is expected during the month of August 2014 to begin discussing full project development for Senate Bill 228 over the five year intended term. Regarding a "New Transportation Model," including pay for premium services and express lanes, incorporating private sector innovation, better systems management to reduce congestion, HPTE Director Michael Cheroutes and the CDOT Executive Director met with four editorial boards from *The Denver Post*, *The Business Journal*, *The Boulder Camera* and *The Aurora Sentinel*. A meeting with Stan Hilkey, the new Executive Director of the Colorado Department of Public Safety, agreed to

redouble the cooperative efforts on Colorado State Patrol coordination for the I-70 Mountain Corridor and incident management response for quick clearance. He offered a special thanks to Regions 1, 3 and 4 in which the Executive Director rode in the Fourth of July parades with his grandson in the restored 1939 Coleman snow plow, a beautiful restoration done by CDOT employees. It was towing an Army Howitzer used for avalanche control on Berthoud and Loveland passes.

Chief Engineer's Report

Josh Laipply stated that he enjoyed the retreat as well and thanked the Commission for the opportunity to participate. He stated that he wanted to address the bid rejections that have been previously mentioned. So far in the month of July, ten bids have been opened, and five of those were rejected at the table. It is an ongoing issue, and CDOT is collecting a lot of information around it. There is a meeting with CCA on July 21, 2014. They will discuss the issue and the best way to move forward. He anticipated coming back to the Commission in August 2014 to discuss the results and possible mitigation measures to overcome the current issues. There are many issues at play including the timing of the market and the market conditions. This is one of the big issues impacting the program currently.

High Performance Transportation Enterprise (HPTE) Director's Report

Michael Cheroutes stated that the HPTE Board met in regular open session on July 16, 2014. They discussed multiple pending and potential matters. An update on the US 36 project showed that everything is on schedule. There was a short discussion on Peak Period Shoulder Lanes and the potential for getting that project accelerated with innovative financing, not including the Public-Private Partnerships. He stated that he spent a lot of time in outreach over the last three or four weeks, meeting with editorial boards from areas of the I-70E project. Those meetings were informative in both directions. They spent time in one-on-one sessions with ten members of the Denver City Council discussing the I-70E project and in particular the options that are on the table for financing and delivering that project. Those discussions included two or three hours with Councilwoman Montero, who led a thorough discussion of what was going on and what the schedule was. HPTE participated in two town halls, including a telephone town hall and a session at the rec center in Swansea. The project and the prospects were discussed in great detail.

Yesterday, the HPTE Board adopted its public transparency policy, which flows from the Governor's Executive Order that was issued in connection with his action on Senate Bill 197. The Transparency Policy mirrors the transparency aspects of Senate Bill 197 almost exactly. In addition, the Board considered a number of public comments that came in regarding that policy. A key one included consideration of transit in connection with any kind of financing that the HPTE looks at.

HPTE also took action on a resolution recommending, subject to further input and analysis, that the HPTE be given the authority to pursue as one of the options on the table a Public-Private Partnership for the I-70E corridor. He stated that he will address that more when the item comes up on the agenda.

FHWA Division Administrator Report

John Cater stated that they received the annual summary of CDOT's research projects. He stated that there was an analysis of the full closures of facilities. It was broader than closing only the freeways, and it looked at the cost-benefit analysis of that. It was an eye-opening report about how effective that can be and what an important tool it is to have in the tool box. A complete closure for a limited period of time can have a smaller impact on the public overall than trying to maintain limited traffic through the facility over weeks or months, depending on the scope of the project. One coming up will be the I-25 Gap Project, which will be a total closure of I-25. This is a prudent way to go. There will be a quality product with much less disruption to the public than trying to do it in traffic for weeks on end.

Secondly, CDOT has been working very hard with FHWA to address inactive projects, projects for which the money has been obligated but there has been no expenditure for a year. This is a prominent issue because the Highway Bill is being reauthorized, the Trust Fund needs to be addressed and an appropriations bill that needs to happen. So there is a lot of spot light on the highway program. The last thing that CDOT wants is to be sitting on large amounts of money that are not being used. It is difficult to overemphasize how important it is to address inactive projects. Steve Markovetz and Richard Zamora have done a great job working with FHWA, especially on local projects. These tend, more often than not, to be locally handled projects. This issue will remain a politically important topic.

Finally, he stated that he wanted to make the Commission aware of legislative changes and how those locally impact Colorado. The good news is that it is likely that a bill will be passed to fill the gap in the Trust Fund. It has already passed the House and will likely pass the Senate soon. It will include an extension on MAP-21 through May. One of the consequences of that bill is that it sets the operating funds for FHWA at a lower level than in the past. That was not expected, so there will be a hit to the local federal highway office. There will be a 3% cut in operating costs, which does not sound like much but the only place take that from is personnel. There is currently a hiring freeze, restricted travel and staff reduction through attrition. As an example, delegates were not able to attend WASHTO. That said, everyone is pleased that there is a reauthorization of MAP-21, a fix for the Trust Fund and a longer term solution coming soon.

Act on Consent Agenda

Chairman Peterson asked if any commissioners wanted to remove an item or if there were any questions. Commissioner Reiff moved to approve the Consent Agenda with the exception Item C – Resolution to Repeal PD 81.0 and 82.0. Commissioner Connell seconded that motion. By unanimous vote of the Commission, Item C was pulled from the Consent Agenda. Chairman Peterson entertained a motion to approve the Consent Agenda without Item C. Commissioner Reiff moved to approve the agenda, and Commissioner Connell seconded the motion. Upon vote of the Commission, the Consent Agenda passed unanimously.

Resolution #TC-3173

BE IT HEREBY RESOLVED, that the Transportation Commission’s Regular Meeting Minutes for May 15, 2014, are approved as published in the official agenda of the June 18 & 19, 2014, meeting.

Resolution #TC-3174

Resolution #TC-3174

Establishing advocacy policies and priorities for the Moving Ahead for Progress in the 21st Century Act (MAP-21) reauthorization bill.

Approved by the Transportation Commission on July 17, 2014

WHEREAS, on July 6, 2012, the President of the United States signed into law a new transportation reauthorization bill, referred to as the “Moving Ahead for Progress in the 21st Century Act” or “MAP-21” (Public Law 112-141); and

WHEREAS, the MAP-21 is the primary federal law governing highway, bridge, transit, and transportation safety programs; and

WHEREAS, the MAP-21 will expire on October 1, 2014; and

WHEREAS, the White House and U.S. Department of Transportation transmitted to the U.S. Congress the “Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act” or “GROW AMERICA ACT”; and

WHEREAS, the U.S. Senate has introduced and begun hearings on S. 2322, referred to as the “MAP-21 Reauthorization Act”;

NOW THEREFORE BE IT RESOLVED, that the Transportation Commission hereby approves the twelve policy priorities delineated in the following table for legislation reauthorizing the MAP-21.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Department staff communicate the approved policy priorities to the Colorado congressional delegation members and staff.

Herman F. Stockinger III
Herman Stockinger, Secretary
Transportation Commission of Colorado

8-13-14
Date

Resolution #TC-3175

Resolution #TC-3175

Repeal of Policy Directive 1005.0 "Removal and Disposal of Wildlife Carcasses from State Highways and Rights-of-Way"

Approved by the Transportation Commission on July 17, 2014

WHEREAS, Policy Directive 1005.0 was adopted by the Transportation Commission on June 15, 2005; and

WHEREAS, Policy Directive 1005.0 set forth the policy CDOT follows to remove wildlife carcasses from state highways and rights-of-way; and

WHEREAS, Policy Directive 1005.0 served its purpose in 2005 by requiring the Department to work collaboratively with the Division of Wildlife and the Colorado State Patrol to develop a working process for the efficient removal of dead wildlife from state highways and rights-of-way; and

WHEREAS, as part of the Department-wide initiative to reduce the number of Policy and Procedural Directives, the Department recommends that Policy Directive 1005.0 should be repealed because the companion Procedural Directive 1005.1 has been updated to reflect current protocol.

NOW THEREFORE BE IT RESOLVED, the Commission herein repeals Policy Directive 1005.0 "Removal and Disposal of Wildlife Carcasses from State Highways and Rights-of-Way" as being no longer necessary.



Herman Stockinger, Secretary
Transportation Commission of Colorado

8-13-14

Date

Discuss and Act on the Resolution to Repeal PD 81.0 and 82.0 Drug and Alcohol Policy

Commissioner Reiff stated that the Commission has asked for the resolution to be delayed and discussed when staff has reviewed comments made by commissioners. Chairman Peterson entertained a motion to delay the resolution until a later time. Commissioner Reiff made a motion to delay, and Commissioner Connell seconded the motion. Upon unanimous vote of the Commission, the resolution was delayed until a subsequent meeting.

Discuss and Act on the Resolution to Approve the Transition Contingency

Scott Richrath stated that last month Executive Director Hunt recommended that there was a transition fund taken out the Transportation Commission Contingency. The Commission approved that and requested staff returns this month with a formal resolution to adopt that. The Transition Fund is intended to help projects that were previously eligible for funding but under new cash management principles or new FASTER Safety eligibility rules may find themselves a little short. Included in the resolution are criteria under which projects could seek funding under the Transition Fund. This would provide authority to use \$10 million. As projects are completed and come in under the total budgeted amount, those dollars would go back to the Transition Fund first. They would not be diverted to other programs. He respectfully

requested the Commission formally adopt the \$10 million Transition Contingency Fund.

Commissioner Reiff asked Scott Richrath to outline the criteria under which a project may be eligible for funds. Scott Richrath stated that for a project to be eligible as it seeks funding from the Transition Fund the project must do the following:

- 1) It must have been fully funded prior to rule changes that have now left it partially funded. A project that knew from Day 1 that it was a \$4 million project but only had \$3 million available will not be able to use this to supplement the original funding.
- 2) The project no longer qualifies for the type of funds that were originally budgeted. A project originally budgeted with FASTER Safety dollars that does not meet the new FASTER Safety criteria and finds that it needs an additional \$500,000 due to bids or other reasons would have the opportunity to come through seeking Transition Funds.
- 3) Funds can only be used for supplementing the budget to advertise the project when the Engineer's Estimate comes in over budget, supplementing the budget to award when bids come in over budget, supplementing the budget to fund a change order for unforeseen conditions relating to the original work not a simple scope increase, and supplementing the budget to close a project.

Approval levels would apply as stated under Policy Directive 703 that the Commission has in draft format under the Information Only tab and that staff will seek to have approved in August 2014. Requests greater than \$2.5 million should seek supplemental funding sources from other programs to reduce Transition Fund request below \$2.5 million. Because the entire fund is \$10 million, the purpose behind the clause is that one project does not take half the contingency.

Any project savings from projects with Transition Funding first revert back to the Transition Fund. It is a last in, first out source of funding for individual projects. Those are the staff recommended criteria, but those can be changed upon request of the Commission.

Chairman Peterson entertained a motion to approve the Transition Contingency resolution. Commissioner Gruen moved for the approval of the resolution. Commissioner Connell seconded the motion. Upon vote of the Commission, the resolution passed unanimously.

Resolution #TC-3176

Resolution #TC-3176

Approving the creation and implementation of a \$10 million Transportation Commission Legacy Fund

Approved by the Transportation Commission of Colorado on July 17, 2014

WHEREAS, pursuant to § 43-1-106(8)(h), C.R.S., the Colorado Transportation Commission ("Commission") is charged with promulgating and adopting all Department budgets; and

WHEREAS, the Transportation Commission Contingency Reserve Fund ("TCCRF") was established to provide the Commission with discretionary funding; and

WHEREAS, pertaining to certain programs, budgetary resources have ceased and/or selection criteria have changed; and

WHEREAS, projects utilizing these programs were selected and initially funded based on previous criteria; and

WHEREAS, the Commission and the Department staff recognize the need to anticipate and plan for unexpected increases to projects within these programs; and

WHEREAS, the Program Management Governance Committee has recommended qualifications pertaining to the usage of the proposed Transportation Commission Legacy Fund; and

WHEREAS, the Commission intends that Policy Directive 703.0 will define the requisite approval levels for both the TCCRF and the proposed Transportation Commission Legacy Fund; and

NOW THEREFORE BE IT RESOLVED, the Commission authorizes a transfer in the amount of \$10 million from the balance of the TCCRF for the implementation of the Transportation Commission Legacy Fund.



Herman Stockinger, Secretary
Transportation Commission of Colorado

8-13-14
Date

Discuss and Act on the 1st Supplement to the FY2015 Budget

Scott Richrath stated that there are two walk on items requested that were distributed electronically earlier. One is a RAMP request that seeks to move funding from red to green using previous nomenclature on how to move full budget authority forward on individual projects. The second one requests a small amount, but it does Contingency funding for Glenwood Canyon bike trail. As that would regain reimbursement through insurance proceeds, those proceeds would return to the Transportation Commission Contingency fund.

He offered to discuss any other projects the Commissioners had questions about and highlighted the line in the supplement that denotes which projects would continue to

come to the Commission under the new PD 703 and which ones would have staff authority, keeping in mind Regional Priority Program is one that would be staff level.

Chairman Peterson entertained a motion to approve the Budget Supplement. Commissioner Gilliland moved to approve the resolution, and Commissioner Gifford seconded the motion. Upon vote of the Commission, the resolution passed unanimously.

Resolution #TC-3177

BE IT SO RESOLVED, That the First Supplement to the Fiscal Year 2014-2015 Budget be approved by the Commission.

Discuss and Act on the Resolution to Approve the Greeley COP

Scott Richrath stated that last year he requested to borrow money to build a new Greeley building. At that time Commissioner Thiebaut stated that CDOT should borrow money if it needs to borrow money and spend cash if there is cash. He stated that the financial advisors and the legal bond counsel determined that it is possible to finance Greeley today. But should CDOT endeavor to take on a headquarters relocation, a Pueblo relocation or any other relocation of significant expense, the desire then may be to bundle those projects and use Certificates of Participation. Through the process, they learned that if one day Greeley will be bundled into a larger package the Commission's formal direction allowing that is necessary at this time. If 18 months down the road, it is determined to bundle Greeley with other properties and had not had formal approval to finance Greeley, it would preclude that future request.

The resolution commits the CFO to return to the Commission if and when it is decided to finance Greeley as part of any other project with the terms and conditions. But this resolution seeks the permission of the Commission to one day finance Greeley should that be the best way in the future. The resolution provides for a cap on the amount that can be requested, but again, a specific dollar amount would be requested at the time of a future resolution, along with terms and conditions of the entire package.

Commissioner Reiff stated that the costs will be \$20.4 million and that Stifel is recommending \$22 million. The contingency will be to cover the tax law issues. Scott Richrath stated that the blank would be filled in with \$22 million rather than \$20.4 million if so adopted by the Commission.

Commissioner Connell moved to approve the resolution, and Commissioner Gilliland seconded the motion. Chairman Peterson asked if there was any discussion. Commissioner Gruen stated that he planned to vote in favor of the resolution but wanted to go on record that he is extraordinarily leery of issuing Certificates of Participation. He understands that CDOT can be forced into that because of TABOR but that he hates to mortgage property that CDOT owns in order to finance other projects. Upon a vote of the Commission, the resolution passed unanimously.

Resolution #TC-3178

Resolution #TC-3178

A Resolution of the Colorado State Transportation Commission Declaring the Official Intent of the Colorado Department of Transportation to Reimburse Itself from the Proceeds of a Future Lease Purchase Financing for Capital Expenditures and Providing Certain Other Matters in Connection Therewith

Approved by the Transportation Commission on July 17, 2014

WHEREAS, the Colorado Department of Transportation ("CDOT") is an executive department of the State of Colorado; and

WHEREAS, the Colorado State Transportation Commission (the "Commission") is the governing body of CDOT; and

WHEREAS, CDOT presently intends to acquire, renovate and construct certain properties to house CDOT operations (the "Project"), including but not limited to administrative facilities in Denver, Greeley and Pueblo, Colorado; and

WHEREAS, CDOT currently intends and reasonably expects to participate in a lease purchase financing to finance the Project, including an amount of approximately \$22 million (the "Reimbursement Amount") for reimbursing CDOT for capital expenditures made by CDOT for the Project prior to the date when funds for the Project are available from such financing; and

WHEREAS, the initial expenditure of funds of CDOT for the Project occurred on a date that is within 60 days prior to the date hereof; and

WHEREAS, such lease purchase financing is to occur within 18 months of either the date that CDOT first expended funds for the Project or the date that the Project is placed in service, whichever is later (but in no event more than three years after the date of the original expenditure of CDOT funds for the Project); and

WHEREAS, the Commission hereby desires to declare the official intent of CDOT, pursuant to 26 C.F.R. § 1.150-2, to reimburse itself for the expenditure of CDOT funds for the Project from the proceeds of a future lease purchase financing of CDOT;

NOW, THEREFORE, BE IT RESOLVED BY THE COLORADO STATE TRANSPORTATION COMMISSION:

Section 1. Dates of Capital Expenditures. All of the capital expenditures covered by this Resolution were or will be made not earlier than 60 days prior to the date of this Resolution.

Section 2. Declaration of Official Intent. CDOT presently intends and reasonably expects to participate in a lease purchase financing within 18 months of either the date of the first expenditure of funds by CDOT for the Project or the date that the Project is placed in service, whichever is later (but in no event more than three years after the date of the original expenditure of CDOT funds for the Project), and to allocate an amount approximately equal to the Reimbursement Amount of the proceeds thereof to reimburse CDOT for its expenditures in connection with the Project.

Section 3. Confirmation of Prior Acts. All prior actions of the officials and agents of CDOT that are in conformity with the purpose and intent of this Resolution and in furtherance of the Project shall be and the same hereby are in all respects ratified, approved and confirmed.

Section 4. Effective Date of Resolution. This Resolution shall take effect immediately upon its passage.

INTRODUCED AND ADOPTED at a regular meeting of the Commission on July 17, 2014



Herman Stockinger, Secretary
Transportation Commission of Colorado

8-13-14
Date

Discuss and Act on the Resolution to Refer I-70E to the HPTE Board for Procurement

Michael Cheroutes stated that resolution before the Commission responds to a recommendation from the HPTE Board that HPTE be given the authority to pursue a funding/financing alternative for the I-70E project that includes private participation. The term public-private participation can have many different meanings and include many different structures. The HPTE needs the confirmation that the option remains on the table during these next six critical months. If the process does not begin on a financing alternative, that alternative will be lost. The resolution requires HPTE to return to the Commission on a quarterly basis to report. There is important due diligence activity this summer with respect to what can be expected from the market if this alternative is chosen and what the optional structures might there. There is some important public outreach coming soon, a process that is ongoing. There will be a number of additional public meetings on this. A critical one will be in the fall as there are more details on the options. There will be opportunities for the Commission to come back and adjust the options or discontinue them altogether.

He stated that his interpretation of the resolution before the Commission was allowing HPTE to get started on a public-private partnership option and to take a look at alternatives to that – everything from public funding of the project, a decision that the project is not economically feasible at all, to different forms of public-private partnerships. There will be lots of time for people to input to that process. The HPTE Board will be comparing all those options throughout the process.

Chairman Peterson stated that the resolution the Commission would vote on today is not the one included in the packet but is the red-lined one that the Commissioners received the previous day. He stated that he is clear in his mind that this resolution allows HPTE to investigate the options but in no way commits the Commission or anyone to a specific financing option at this time.

Commissioner Hofmeister asked if HPTE was looking at partial private funding or if HPTE was looking at the possibility of funding the entire project privately because there have already been discussions about committing Bridge Enterprise funds and other funds. Director Cheroutes stated that it would partial funding. The process has been over the last several months since January. The Commission decided what the project ought to be and what ought to be maximum funds available for the project. The HPTE now begins the process to see whether it is possible to get the project financed within those limitations. The Commission did decide preliminarily to commit Bridge Enterprise monies, 228 monies and DRCOG monies. Commissioner Hofmeister asked what estimated percentage of the project would be funded privately. Director Cheroutes said approximately 10%-15%.

Commissioner Reiff stated that this is a single step in the road. He has repeated that this has to be an iterative process, both with our industry partners and what the community groups think. It is necessary to understand the impact. He asked for those revisions because as a Commissioner he has not committed to an approach. The Commission needs to put something on the table to have people react to. It has been explained that the industry partners will not take it seriously unless CDOT offers them something to consider. He stated that he firmly believes that this will be back to the Commission and to the HPTE Board on multiple occasions. It is necessary to understand what everyone is thinking on this before making a final decision.

Commissioner Gifford stated that the Commission received a letter from Denver Councilwoman Judy Montero of District 9, in whose district a majority of this project is located, expressing concern about the level of communication with, involvement with and comprehension of this very complex financing for this very complex project. Among other things, she requested that the Commission hold a follow up meeting in her district to discuss the implications of this decision. Commissioner Gifford made a request that the Commission work with staff to work with Councilwoman Montero to set up a follow up meeting that meets her request and that she feels would be adequate in terms of discussing, informing and listening to the community on this issue. Director Cheroutes stated that he would love the opportunity to that.

Commissioner Gilliland stated that she is an HPTE Board member as well as sitting on the Commission. This project is very complex, very significant and very important for the state of Colorado. The Commission and the Board have had many meetings about the different financial options on the table. It is time because it is necessary to

gain enough security with the private investors that may want to work with CDOT as partners. CDOT needs to give them some type of consideration to move forward with. She stated that she is very supportive of this and concurs with the other Commissioners that CDOT needs to listen to the public and be as transparent as possible to engage them in this discussion. But this issue is very complex, and it is difficult to get everybody in the public update on all the different aspects of the financing. It needs to be done to the extent possible. Given the new HPTE Transparency Policy, every effort is being made to engage in every way that CDOT can in an effort to get the right level of input, to listen to that input and to use it to move toward a decision. However, it is important to at least take this step and to move forward to get this under consideration as a real option to look at in order to move down the road. It is a very complex project, and CDOT needs something to move forward with. She stated that she is totally supportive given the way the resolution is written and that the Commission is not making a formal decision that this will be a P3 contract but that this is only an evaluation of that as an option. She stated that she is fully supportive of moving forward.

Commissioner Connell stated that she will support moving ahead with this. She did not want to reiterate all the previous statement, but she stated that she moves with caution. Perception is 9/10 of the law, and the Commission needs to take what was learned from the missteps with US 36 and assure that those will not be repeated in this process. The more complex something becomes the more people have issues with it. She stated that she fully supports moving ahead but that CDOT has to do much more public contact.

Director Cheroutes stated that the public-private partnership process in this case, because it is such a complicated process, will stretch out over a minimum of a year and a half. There will be many exit points for this if it looks like it will not work for one reason or another. The legislature will provide their views on this. A number of community activists will provide their views on this. It is a complicated process to describe, and the HPTE is aware that they will have to take a lot of time to describe what is going on. They are committed to doing that.

Chairman Peterson stated that this is a very complex project on many levels, including an engineering level, a fiscal level, to a social level with the neighborhoods that are involved. It is critical to the statewide system. It is obvious that the current existing conditions do not offer an alternative to offer an alternative to provide the transportation required for the Denver Metropolitan Area and the state as a whole. This is a state issue. The Commission has committed a large amount of future budgets to this project, recognizing its importance. He thanked the HPTE Board and Director Cheroutes for adding the verbiage in the one section of this resolution that makes it much easier to move forward at this time. These referral processes look at alternative means to provide the transportation that the state needs over time and realize that CDOT can no longer depend on 20th century mechanisms to fund 21st century needs across the state or the country. The Commission heard from John Cater about the problems and challenges that transportation is facing on the federal level, which are by no means solved at this point. This provides an option that should be looked at. It gives HPTE the authority to move forward in investigating those options without coming up with a pre-conclusion as to whether any of those options are viable for this particular project. He stated that this is time critical, but it is also critical to gather as much information from public outreach and public input as

possible, including from elected legislators at the State House and other groups that will be directly involved like the traveling public within the state. He stated that CDOT has done that to date and that he is confident that will continue to happen and expand this complex issue moves forward. He stated that he will be supporting the resolution.

Chairman Peterson entertained a motion to refer the I-70E project to the HPTE Board. Commissioner Gifford moved to approve the resolution, and Commissioner Gilliland seconded the resolution. Upon vote of the Commission, the resolution passed unanimously.

Resolution #TC-3179

Resolution #TC-3179

Approving referral of the I-70 East Project to the Colorado High Performance Transportation Enterprise to pursue Public-Private Partnership opportunities in the procurement of the I-70 East Project.

Approved by the Transportation Commission on July 21, 2014

WHEREAS the Transportation Commission is responsible, pursuant to Section 43-1-106(8), C.R.S., for formulating the general policy with respect to the management, construction, and maintenance of public highways of the Colorado Department of Transportation (CDOT); and

WHEREAS the General Assembly created the Colorado High Performance Transportation Enterprise (HPTE), pursuant to Section 43-4-806, C.R.S., as a government-owned business within CDOT to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

WHEREAS such innovative means of financing projects include, but are not limited to, public-private partnerships, operating concession agreements, user fee-based project financing, and availability payment and design-build contracting; and

WHEREAS CDOT, in conjunction with HPTE and the Colorado Bridge Enterprise, has investigated various delivery methods that can be utilized in delivering an important surface transportation project that includes replacing the I-70 viaduct between Brighton Blvd and Colorado Blvd with a Partially Covered Lowered (PCL) highway and other improvements reaching as far east as Tower Road (I-70 East Project); and

WHEREAS the delivery methods reviewed for the I-70 East Project have included (i) a performance based design/build/operate/maintain/finance concept (Performance Based Public-Private Partnership); (ii) a toll-risk based design/build/operate/maintain/finance concept; (iii) a design/build/finance concept; and (iv) a design/build public funding approach; and

WHEREAS based on initial value for money analysis considered by the Transportation Commission, other financial information available to the public, and public input received to date, the Performance Based Public-Private Partnership appears to give CDOT the best value for its money in delivering the I-70 East Project in a timely and efficient manner; and

WHEREAS the Transportation Commission has determined that HPTE, the entity statutorily authorized to pursue innovative means of financing surface transportation projects, is uniquely suited to handle the procurement efforts related to implementing the I-70 East Project, with the support of the Office of Major Project Development; and

WHEREAS the Transportation Commission supports the efforts of HPTE to involve the public as it evaluates financing options for I-70 East Project and to continue to solicit and consider public input.

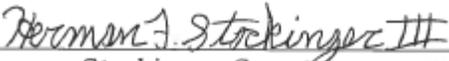
NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby refers the procurement of the I-70 East Project to HPTE to further pursue Public-Private Partnership opportunities for the I-70 East Project and such referral and the Transportation Commission's final decision is subject to, and may be modified by, continued review and consideration of financial and other relevant analysis and to the continued review and consideration of public input; and

BE IT FURTHER RESOLVED, the Transportation Commission requests that HPTE, in administering the I-70 East Project procurement, conduct an updated value for money analysis prior to issuing a Request for Proposal, provide primary contract terms to the Transportation Commission for its review prior to commercial close, and, in cooperation with the Office of Major Project Development, prepare quarterly reports to the Transportation Commission regarding the status of the I-70 East Project and the related procurement efforts; and

BE IT FURTHER RESOLVED, the Transportation Commission will continue to evaluate all future budgeting for the I-70 East Project; and

BE IT FURTHER RESOLVED, the Transportation Commission directs staff to develop a comprehensive program addressing disadvantaged and small business utilization and workforce training in administering the procurement for the I-70 East Project and to provide the details of this program to the Transportation Commission; and

BE IT FURTHER RESOLVED, the Transportation Commission directs staff to consider and recommend an HOV policy for the I-70 East Project that provides system continuity with existing and proposed express lanes and is responsive to input from corridor stakeholders.



Herman Stockinger, Secretary
Transportation Commission of Colorado

7-22-14
Date

Acknowledgements

Deb Perkins-Smith stated that CDOT was chosen to receive the Community Partner Award by the American Lung Association in Colorado for the CDOT Air Quality Program's work in program support to the CASEO Clean Air at Schools - Engines Off! program.

The Engines Off program was launched in 2008 and has since provided education and support for 30 schools around Colorado and the Front Range. The Engines Off! program is an education and intervention program conducted at elementary and middle schools to increase awareness about the harmful impacts of idling, especially around young children, and integrate behavior-changing mechanisms into the school culture. The year-long program includes collection and analysis of emissions data in and around school properties, an educational campaign spearheaded by school faculty and students, and student-led interventions including securing parent pledges and in-classroom presentations (at the middle school level).

Participating schools were located in the counties of Adams, Arapahoe, Boulder, Denver, Douglas, Garfield and Mesa. On average, the 11 schools reduced emissions

by 67% - which equates to a carbon monoxide equivalent of over 168,000 individual cigarettes no longer being smoked each day!

This award presented to Sabrina Williams and Jill Schlaefer at the Annual American Lung Association's Appreciation Event on June 19th, 2014. Sabrina Williams has been a part of this programs development since its inception.

Chuck Attardo stated that he is the Region 1 Planning and Environmental Manager and that Ashley Bushey, the Region 1 Historian, and Janet Garek, an Environmental Project Manager at Region 1 were with him. He thanked the Commission for the opportunity to share a success story with the Commission. He stated that they evaluate 120 projects each year for environmental impacts. This historic guardrail project has been one of the gems of the last year. At first, it was unbelievable that there might be a historic guardrail that would delay the completion date of a project. Guardrail replacement is usually straightforward when it comes to historical clearance. However, this was a different type of guardrail because it was spring loaded. This was the original installation on US 40. US 40 was constructed between 1936-1938 in Jefferson County with assistance from the PWA, part of FDR's New Deal Recovery Plan. Further investigation underlined that this type of guardrail was an historical turning point in guard rail design, moving from passive delineation into something that was more safety oriented, the idea being that the springs would guide the vehicle back onto the highway. Even though this is some of the last type of this spring loaded guardrail was very common in the 1930's. In terms of the historic clearance, the project had no federal nexus. They were able to work with the project team to archivally document the rail before it was replaced and maintain the project schedule. Janet stated that the exciting part of this project was that the research revealed such a rich history of innovation, collaboration and coordination. Everyone worked together to make a successful project delivery, even with the historic guardrail, which was actually substantially made here in Denver.

Chairman Peterson stated thanked them for the work that they do. He stated that it would have been hard to imagine that there was this much of an evolutionary process in safety for the traveling public. It indicates that our transportation system is always evolving, it has in the past and will continue to do so in the future. He commended them on their prompt action in preserving something that is historically important for the organization and for the people of Colorado without materially delaying the new guardrail, which is a safety issue. That is a perfect example of our engineering and staff of today and those tasked with reminding us of where we came from so that we know where we are going.

Discuss Senate Bill 228

Chairman Peterson thanked State Budget Director Henry Sobanet for returning to CDOT to present Senate Bill 228 to the Commission and to the public. Mr. Henry Sobanet stated that it was a pleasure to be there today. He stated that he was at the Commission to be of service to the Commission and to answer any questions that the Commission may have about Senate Bill 228. Many people may recall the old Senate Bill 1 in which a small part of the sales tax came to the Highway Fund from the General Fund. During the recession the law that triggered that was repealed and replaced with the new law. The trigger for the new law Senate Bill 228 is personal income in the state of Colorado. If personal income in the state of Colorado grows by

5% or more in a calendar year, the most applicable subsequent fiscal year gets a diversion of 2% of the state's General Fund revenue to the Highway Fund.

Right now, during calendar year 2014, it is projected that personal income will grow that fast or faster. That means that for fiscal year 2016 there will be a 2% diversion to the Highway Fund from the General Fund. A percentage of that is earmarked for transit, but the rest goes to the more normal program here at CDOT. Looking ahead, Director Hunt requested a discussion about the risks and how secure the Commission should feel about this fund transfer. The risks are in a few places. First, the forecast could be wrong. If personal income in Colorado does not grow by 5%, the law would not be automatically triggered. The second risk is within the law itself. Even if it is triggered, under certain conditions, if there is a certain type of TABOR refund within the state, there is a cascade of reduction that would occur in the amount of money that would come to CDOT. Ironically, faster economic growth could actually whittle away at the ability to fully fund this under the law. Before there is a TABOR rebate the state would actually collect more money, and there could be a policy choice to still make the transfer to CDOT.

One of the dynamics of the last legislative session was the extent to which state has met its requirements under Amendment 23. There is currently a lawsuit about the appropriation level to K-12 education under Amendment 23. There is a lot of political wrangling over how much money should go to K-12 education last session. That is the biggest line item in the General Fund, and it would be unfair to say that there is no political pressure from certain quarters to simply say more money to education next year.

As of today though, the budget request in November will include allowing for the transfer. The non-trigger would have to mean that an economic disruption is foreseen that would drop personal income. Right now, Colorado's economy is in the top five easily in the country by a number of measures. So for the forecast to drop something would have to happen between now and September. The September forecast is what the budget is based on. If the forecast remains relatively unchanged, this will be in the budget request in November.

The third thing is that the Budget Office has tried since 2011 to make room for this transfer to be as easy as possible. The 228 law included a provision where capital construction got a mandatory increase in the state and also the state's reserve got a mandatory increase. The entire mandatory reserve increase has been removed for the whole law. The reserve level is already 6½% in the General Fund that the law anticipated. By meeting that on an annual budget, it is easier to send 2% of the budget to transportation. The economy has done well, and space has been made to make the 2% transfer. And absent a huge disruption, this will be in the budget request.

Commissioner Gruen stated that something was mentioned about the initial contribution to transportation being one year. He asked Mr. Sobanet if the transfer will be one year or five years. Mr. Sobanet stated that the law triggers for five years, but the budget is done one year at a time. They request one year at a time, but the law triggers a five year diversion.

Commissioner Reiff stated that he remembers the Noble Bill and its repeal. He stated that this seems a lot like the Noble Bill, and he asked what the politics looked like right now. He stated that Mr. Sobanet mentioned K-12 education and asked what Mr. Sobanet was hearing about the subject. Mr. Sobanet stated that notwithstanding all that pressure around K-12 and other things in the budget as Colorado is recovering. He did not believe there was single vote in the legislature to repeal Senate Bill 228. He stated that he did not even hear side conversations of taking it away. With term limits, some of the people who voted for the law are not there anymore. Some of the institutional knowledge about why the law was passed is now gone, which leaves a challenge operationally to do some outreach and education. Balancing that out, people in leadership and on the Budget Committee know about this law and have been planning for it for three years. To that extent, the knowledge it good, and transportation is a priority at the legislature. All the different lobbies are powerful. They have their ways and their talking points, but he did not sense any political will to repeal the law during the last year.

Chairman Peterson thanked Mr. Sobanet for taking time to visit the Commission. Mr. Sobanet thanked the Commission for their service.

Other Matters

Chairman Peterson stated that there were no other matters to come before the Commission.

Adjournment

Chairman Peterson announced that the meeting was adjourned at 10:20am.



COLORADO
Transportation Commission

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

DATE: August 21, 2014
TO: Transportation Commission
FROM: Darrell Lingk / Mark Imhoff / Herman Stockinger
SUBJECT: Repeal of Policy Directives 81.0 "Drug and Alcohol Policy" and 82.0 "Implementation of FTA Regulations for a Drug and Alcohol Free Workplace"

Purpose: To repeal two Policies Directives (81.0 and 82.0) concerning FHWA and FTA drug and alcohol testing requirements as part of the Department’s consolidation of all drug and alcohol testing-related Directives into Procedural Directive 81.1.

Action: Pass a Resolution repealing Policy Directive 81.0 “Drug and Alcohol Testing” and Policy Directive 82.0 “Implementation of FTA Regulations for a Drug and Alcohol Free Workplace.”

Background: As a result of recent changes in state law regarding the legalization of marijuana, the Department undertook a review of its two Policy Directives and four Procedural Directives governing drug and alcohol testing. As part of the initiative to reduce the number of directives, Procedural Directive 81.1 has been developed to include all drug and alcohol testing information in one document. Procedural Directive 81.1 sets out the process that will be followed for both safety-sensitive and non-safety-sensitive employees as well as employees who self-report.

The agenda item requesting repeal of Policy Directives 81.0 and 82.0 was carried over from the July 2014 Commission meeting in order to respond to questions from the Commission. Commissioners Reiff and Gifford asked for clarification how the consolidated Procedural Directive will adhere to federal and state laws on marijuana, and whether the Procedural Directive gives sufficient guidance on the lawful and unlawful use of prescription drugs.

First, with regard to the use of marijuana, employees may not report to work impaired or while at work be impaired by alcohol or any controlled substance including marijuana. Second, the Department reviewed the draft Procedural Directive 81.1, and made the revision below to clarify that the use and possession of prescription drugs in accordance with a valid prescription is not a violation of Procedural Directive 81.1:

A. General Requirements

1. Employees are required to report to work unimpaired, and while at work will remain unimpaired by alcohol, Controlled Substances including marijuana, and other drugs including prescription and non-prescription medications.

2. It is a violation of this Directive for an Employee to use, possess, manufacture, sell, trade, transfer, and/or offer for sale alcohol or any drug covered under the Federal Controlled Substances Act, including marijuana, while on work hours except as stated in paragraph 3, below. Any drug covered under the Federal Controlled Substances Act, including marijuana, and drug paraphernalia, is prohibited on CDOT property except as stated in paragraph 3, below.



3. Use and possession of prescription drugs is not prohibited when possessed by the individual to whom it is prescribed and when used in the stated dosage, according to labeling, and a physician's prescription. The sale, trade, transfer, and/or offer for sale of any prescription drug is prohibited on CDOT property and during work hours. Marijuana, including medical marijuana, is not a prescribed drug. Over-the-counter drugs are not prohibited when used at the stated dosage according to labeling.

4. Violations of this Directive may be cause for management/supervisor intervention that may result in a referral to mandatory treatment and/or corrective or disciplinary action up to and including termination.

5. It is the responsibility of all management and supervisory personnel to implement and enforce this Directive and ensure compliance by Employees.

6. CDOT will comply with the model collection and drug testing standards issued by the U.S. Department of Health and Human Services.

Details: Consolidated Procedural Directive 81.1 meets state and federal requirements, including those specific to the Federal Transit Administration. The Department worked together with the Office of the Attorney General drafting this Procedural Directive, which will be submitted for signature to Executive Director Hunt after the Commission reviews and approves repeal of Policy Directives 81.0 and 82.0.

Key Benefits: The consolidated Procedural Directive 81.1 includes the following significant points:

- Employees may not report to work impaired or while at work be impaired by alcohol or any controlled substance including marijuana;
- Appointing Authorities retain the discretion to determine the appropriate course of personnel action;
- The directive sets forth which tests (pre-employment, reasonable suspicion, post-accident, random drug) apply to safety-sensitive and non-safety-sensitive employees;
- The definition of "safety-sensitive" employee is limited to the possession of a CDL license, except for DTR employees who are under Federal Transit Administration regulations; these regulations contain a broader definition;
- CDOT's encouraging employees to self-disclose is integrated into this directive (prior 81.3); and
- The Procedural Directive eliminates unnecessary language on the testing process deemed unnecessary in that the specifics are stated in federal regulations or readily available from the testing facility and substance abuse professionals.

Options and Recommendations: (1) Pass a Resolution Repealing Policy Directives 81.0 and 82.0 (staff supported); (2) Decline to Repeal Policy Directives 81.0 and 82.0 (Pro: request additional information / Con: delay implementation of updated Procedural Directive 81.1)

Attachments

Policy Directive 81.0

Policy Directive 82.0

Resolution repealing Policy Directives 81.0 and 82.0

Consolidated Red-lined Procedural Directive 81.1 (showing revisions)



COLORADO DEPARTMENT OF TRANSPORTATION		<input checked="" type="checkbox"/> POLICY DIRECTIVE <input type="checkbox"/> PROCEDURAL DIRECTIVE	
Subject Drug and Alcohol Policy			Number 81.0
Effective 6/19/03	Supersedes N/A	Originating office CDOT Statewide Safety Committee	

PURPOSE

The Colorado Department of Transportation has a vital interest in maintaining a safe, healthful and efficient working environment; free of drugs, alcohol and other controlled substances, for its employees, clients and the public.

AUTHORITY

- Governor’s Executive Order EO D-000291, Drug-Free Workplace
- Drug-Free Workplace Act of 1988 (P.L. 100-690, Title V, Sub-Title D)
- Omnibus Transportation Employee Testing Act of 1991
- 49CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs
- 49CFR Part 382. Controlled Substance and Alcohol Use and Testing
- Substance Abuse Policy for Colorado State Employees

POLICY

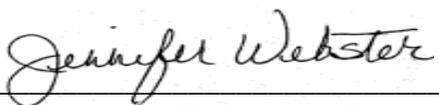
The State of Colorado and the Colorado Department of Transportation has a vital interest in maintaining a safe, healthful and efficient working environment for its employees, clients and the public. Employees impaired by alcohol or other drugs during work hours may pose safety and health risks, not only to themselves, but also to others.

Therefore, to ensure a safe working environment, it is the policy of the State of Colorado and the Colorado Department of Transportation that the use of alcohol, other drugs or controlled substances that result in job impairment is prohibited. Likewise, it is the policy of the State of Colorado and the Colorado Department of Transportation that illegal possession, manufacture, use, sale or transfer of controlled substances on state property or during work hours by its employees is prohibited. Furthermore, it is the policy of the Colorado Department of Transportation to conduct controlled substance and alcohol testing for their employees. All CDOT employees are subject to Reasonable Suspicion testing. Positions requiring Commercial Driver’s License shall also be subject to Pre-employment, Random, Post-Accident, Return-to-Duty, and Follow-up testing.

Violations of this policy will be just cause for management/supervision intervention that shall result in referral to counseling and/or treatment and may result in corrective or disciplinary actions up to and including termination.

REVIEW DATE:

This policy should be reviewed before June 2010.



 Transportation Commission Secretary

06/19/03

 Date

COLORADO DEPARTMENT OF TRANSPORTATION		<input checked="" type="checkbox"/> POLICY DIRECTIVE <input type="checkbox"/> PROCEDURAL DIRECTIVE
Subject Implementation of FTA Regulations for a Drug and Alcohol Free Workplace		Number 82.0
Effective 5.23.13	Supersedes N/A	Originating office Division of Transit and Rail / Transit Programs Section

I. PURPOSE

The Colorado Department of Transportation (“CDOT”) is committed to:

- Maintaining a working environment free of drugs, alcohol and other controlled substances; and
- Complying with federal regulations regarding drug and alcohol testing, education and compliance regarding a drug and alcohol free workplace for contractors and grantees who receive Federal Transit Administration funding from CDOT.

II. AUTHORITY

41 U.S.C. § 8101, § 8102, § 8103 to § 8106, Drug Free Workplace Act of 1988

42 U.S.C. § 12114, Illegal Use of Drugs and Alcohol

49 U.S.C. § 5331, Alcohol and Controlled Substances Testing

49 C.F.R. Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

49 C.F.R. Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

49 CFR Part 32 Government Wide Requirements for a Drug-Free Workplace (Grants)

III. APPLICABILITY

This Policy Directive shall apply to all Division of Transit and Rail employees of CDOT, and all Contractors or Grantees funded by the Federal Transit Administration.

IV. DEFINITIONS

The definitions set forth in Procedural Directive 82.1 “Procedures for Implementation of FTA Regulations for a Drug- and Alcohol-Free Workplace” are incorporated herein by this reference.

V. POLICY

- A. The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace.
- B. If convicted of a drug statute violation occurring in the workplace, employees are required to report such to the employer in writing no later than five days after such conviction.
- C. All Division of Transit and Rail CDOT employees and all Contractors and Grantees must abide by the terms of this Policy as a condition of employment and funding.
- D. All Division of Transit and Rail CDOT employees, Contractors and Grantees shall follow applicable federal regulations with regard to drug and alcohol testing. Contractors or Grantees may obtain a copy of the federal regulations from the Manager of the Transit Grants Unit, Division of Transit and Rail, or his designee, or the Director of the Office of Transportation Safety, or his designee, at CDOT Headquarters.
- E. In the event this Policy Directive conflicts with any state or federal law or regulation, the state or federal law shall control. For purposes of construction, all relevant federal laws and regulations are herein incorporated by this reference.
- F. The Manager of the Transit Grants Unit, Division of Transit and Rail, or his designee, shall be the designated person to answer questions from Contractors or Grantees about the requirements under this Policy Directive. For CDOT employees, the Director of the Office of Transportation Safety or his designee shall be the designated person to answer questions.

VI. IMPLEMENTATION PLAN

- A. The Office of Policy and Government Relations shall post this Policy Directive on the intranet webpage within one week of adoption.
- B. The Manager of the Transit Grants Unit shall distribute this Policy Directive to all Division of Transit and Rail employees, contractors and grantees within thirty (30) days of adoption.
- C. The Manager of the Transit Grants Unit and the Office of Procurement and Contract Services will ensure that appropriate language in conformance with federal regulations is contained in all contracts and agreements.
- D. The Manager of the Transit Grants Unit will reference this Policy Directive in its State Management Plan and in any applicable manuals and other guidance.
- E. The Manager of the Transit Grants Unit shall monitor all contractors and grantees for ongoing compliance with this Policy Directive.

VII. REVIEW DATE

This Policy Directive shall be reviewed on or before May 2014.

Herman J. Stockinger III
Secretary, Transportation Commission

5-23-13
Date of Approval

COLORADO DEPARTMENT OF TRANSPORTATION			<input type="checkbox"/> POLICY DIRECTIVE <input checked="" type="checkbox"/> PROCEDURAL DIRECTIVE
Subject CDOT's Drug and Alcohol Directive			81.1
Effective TBD	Supersedes 82.0: 5.23.13 82.1: 5.23.13 81.0: 6.19.03	81.1: 8.07.06 81.2:4.01.04 81.3: 4.01.04	Originating Office Office of Transportation Safety (OTS) (Re: DOT requirements) and Division of Transit and Rail (Re: FTA requirements)

I. PURPOSE

The Colorado Department of Transportation (“CDOT”) seeks to maintain a safe, healthy, efficient work environment for its Employees, volunteers and the public. Employees who are impaired by alcohol and/or drugs during working hours may cause disruption in the workplace and pose safety and health risks not only to themselves, but to others. In order to ensure the safety of all employees, volunteers, and the public, use of alcohol, other drugs or Controlled Substances that adversely impacts the Employee and volunteer’s ability to perform his or her job will not be tolerated. It is CDOT’s intent to balance our respect for individuals with the need to maintain an alcohol and drug free environment by complying with the provisions of the Drug-Free Workplace Acts of 1988 and 1998.

II. AUTHORITY

Federal Authority

Federal Drug-Free Workplace Act of 1988 and 1998, as amended, and Implementing Regulations, 41 U.S.C. § 8101, *et seq.*

Omnibus Transportation Employee Testing Act of 1991, (FOTETA), 49 U.S.C. 5331, as amended, and Implementing Regulations

The Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C § 801, *et seq.*, including the Federal Controlled Substances Act of 1970, as amended, and Implementing Regulations

42 U.S.C. § 12114, Illegal Use of Drugs and Alcohol

49 C.F.R. Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

49 C.F.R. Part 382, Controlled Substances and Alcohol Use and Testing

49 C.F.R. Part 655 “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit

Subject Procedures for Drug and Alcohol Testing	Number 81.1
---	-----------------------

Operations”

State Authority

CDOT Executive Director pursuant to § 43-1-105, C.R.S.

Executive Order D0002 91 Regarding Substance Abuse Policy for Colorado State Employees

State of Colorado Constitution, Article XVIII – Section 14 (10) (b)

State of Colorado Constitution, Article XVIII – Section 16 (6) (a)

§ 42-4-1301, C.R.S.

Colorado Revised Statutes Title 18, Article 18, Part 2, Schedules I-V

State Personnel Board Rules and Personnel Director’s Administrative Procedures 4 CCR 801.

Department of Public Safety, Minimum Standards for the Operation of Commercial Vehicles, 8 CCR 1507-1.

III. APPLICABILITY

This Procedural Directive applies to all CDOT Employees. Employees who are designated as “safety sensitive” must adhere to all related federal and state laws, regulations and policies as well as CDOT policies and procedures. All CDOT employees are subject to the provisions of this Procedural Directive, and in addition, CDOT employees in the Division of Transit and Rail must also be familiar with and adhere to the Federal Transit Administration requirements in section V. D.

IV. DEFINITIONS

“Appointing Authority” refers to the status of a CDOT employee as defined under Colorado Constitution art. XII, Sec. 13 (7) and may also include his/her Designee.

“CDOT Property” means land, buildings, vehicles or other assets owned, leased, borrowed, or otherwise used by CDOT.

“Controlled Substance” means any drug or substance listed in the Federal Controlled Substances Act.

“Employee” means any individual who is an employee or volunteer who conducts business for CDOT, is representing CDOT, or is conducting business in or on CDOT property.

Subject Procedures for Drug and Alcohol Testing	Number 81.1
---	----------------

“Impairment” may be present when an Employee’s behavior or condition adversely affects job performance, threatens the safety of her or himself or others or property, and/or exhibits unprofessional conduct detrimental to the public’s perception of state personnel as a result of the use of alcohol, Controlled Substances or other drugs.

“Safety-Sensitive” means an Employee who holds a CDL license necessary for conducting business on behalf of CDOT. For FTA funded positions, “Safety Sensitive” also includes any Employee engaged in the direction or maintenance of a passenger vehicle. This includes operators of revenue service vehicles, CDL-holding operators of non-revenue service vehicles, vehicle controllers, revenue service vehicle mechanics, firearm-carrying security personnel. See Appendix “C”.

“Trained Supervisor” means a CDOT Employee who supervises other CDOT Employees and who has undergone the required Reasonable Suspicion training to act as a Trained Supervisor for purposes of this Directive.

“Work Hours” mean hours during which an Employee is conducting business on behalf of CDOT, representing CDOT, while in or on CDOT property, and while on-call or paid standby for CDOT. For Safety-Sensitive positions “Work Hours” also means the time when an Employee is required to be in readiness to work until the time he/she is relieved from all responsibility for performing work. See 49 CFR § 395.2.

V. PROCEDURE

A. General Requirements

HIGHLIGHTED TEXT WILL BE REPLACED BY TEXT IN RED FONT BELOW

1. Employees are required to report to work unimpaired, and while at work will remain unimpaired by alcohol, Controlled Substances including marijuana, or other drugs including prescription and non-prescription medications.
2. CDOT will comply with the model collection and drug testing standards issued by the U.S. Department of Health and Human Services.
3. It is a violation of this Directive for an Employee to use, possess, sell, trade, transfer, and/or offer for sale alcohol or any drug covered under the Federal Controlled Substances Act, including marijuana, while on Work Hours. Any drug covered under the Federal Controlled Substances Act, including marijuana, and drug paraphernalia is prohibited on CDOT property.
4. Violations of this Directive may be cause for management/supervisor intervention that may result in a referral to mandatory treatment and/or corrective or disciplinary action up to and including termination.
5. It is the responsibility of all management and supervisory personnel to implement and enforce this Directive and ensure compliance by Employees.

Formatted: Font: Italic
Formatted: Highlight

Subject Procedures for Drug and Alcohol Testing	Number 81.1
---	----------------

1. Employees are required to report to work unimpaired, and while at work will remain unimpaired by alcohol, Controlled Substances including marijuana, and other drugs including prescription and non-prescription medications.

Formatted: Font color: Red

2. It is a violation of this Directive for an Employee to use, possess, manufacture, sell, trade, transfer, and/or offer for sale alcohol or any drug covered under the Federal Controlled Substances Act, including marijuana, while on work hours except as stated in paragraph 3, below. Any drug covered under the Federal Controlled Substances Act, including marijuana, and drug paraphernalia, is prohibited on CDOT property except as stated in paragraph 3, below.

3. Use and possession of prescription drugs is not prohibited when possessed by the individual to whom it is prescribed and when used in the stated dosage, according to labeling, and a physician's prescription. The sale, trade, transfer, and/or offer for sale of any prescription drug is prohibited on CDOT property and during work hours. Marijuana, including medical marijuana, is not a prescribed drug. Over-the-counter drugs are not prohibited when used at the stated dosage according to labeling.

4. Violations of this Directive may be cause for management/supervisor intervention that may result in a referral to mandatory treatment and/or corrective or disciplinary action up to and including termination.

5. It is the responsibility of all management and supervisory personnel to implement and enforce this Directive and ensure compliance by Employees.

6. CDOT will comply with the model collection and drug testing standards issued by the U.S. Department of Health and Human Services.

B. Applicable Testing

Type of Testing	Non-Safety Sensitive Employees	Safety Sensitive Employees
Pre-Employment (Drug)		✓
Reasonable Suspicion	✓	✓
Post-Accident		✓
Random Alcohol/Drug		✓
Return-to-Duty	✓	✓

<small>Subject</small> Procedures for Drug and Alcohol Testing	<small>Number</small> 81.1
--	-------------------------------

Follow-Up	✓	✓
-----------	---	---

1. Pre-Employment (Drug). Safety-Sensitive candidates for employment with CDOT shall be subject to pre-employment testing and may not be approved for employment if they test positive or refuse to test. See CDOT Form 1200, "Pre-Employment Physical/DOT Physical/ All Drug and Alcohol Testing."

a) The candidate must provide written consent to CDOT to contact the candidate's previous employer(s) so that they may provide CDOT with:

- (1) Alcohol test results with a concentration of .04 or greater;
- (2) Positive controlled substance(s) test results and
- (3) Refusals to submit to a required alcohol or controlled substance(s) test.

2. Reasonable Suspicion

a) All Employees are subject to reasonable suspicion testing. Reasonable suspicion testing is designed to provide management with a tool to identify Employees who may use alcohol, Controlled Substances, or other drugs including prescription and non-prescription medications that result in Impairment on the job.

- (1) Reasonable suspicion testing for alcohol should be performed within 2 hours of the reasonable suspicion determination whenever possible, but must be performed within 8 hours following the reasonable suspicion determination.
- (2) When alcohol testing is not administered within 2 hours following the reasonable suspicion determination, written documentation must be provided stating the reason for the test delay. When alcohol testing is not performed by the 8 hour time limit, attempts to administer the test shall cease and a written record shall be prepared and maintained by the supervisor indicating why the test could not be performed.

b) Employees have a duty to inform a supervisor or Appointing Authority if he or she observes an Employee who appears impaired on the job.

c) If an Employee who first observes behavior that appears to be indicative of Impairment is not a Trained Supervisor, a Trained Supervisor must be contacted to conduct the reasonable suspicion screening process.

d) When a Trained Supervisor observes that reasonable suspicion may exist to

Subject Procedures for Drug and Alcohol Testing	Number 81.1
---	----------------

suggest that an Employee is impaired on the job, he or she may request the presence of a second Trained Supervisor. A second Trained Supervisor is recommended but not required during the reasonable suspicion screening process.

e) Training coordinators in the regions and headquarters have access to their respective training records which is located in SAP in the ZH40 Report. Enter Object ID 50000940. This pulls up the names, the positions, the organizations, and the dates of individuals trained in reasonable suspicion and the date training was completed. The Drug and Alcohol Coordinator can act as a resource if needed to locate CDOT employees trained in reasonable suspicion.

f) Trained Supervisors must:

- (1) Meet all training and record keeping requirements of this Procedural Directive.
- (2) Complete the Reasonable Suspicion checklist, CDOT Form 946a.
- (3) Upon completing Form 946a, contact the Appointing Authority for a reasonable suspicion determination and to get authorization to send the Employee for drug and/or alcohol testing.

g) The Appointing Authority is encouraged to meet with the Employee, either in person or on the telephone to inform him or her of the reason for sending the Employee for testing, and allow the Employee an opportunity to explain the circumstances surrounding the behavior underlying the reasonable suspicion.

h) All Employees shall be temporarily removed from the performance of their duties on the day of the test. The following day, Employees are required to report for regularly scheduled duty and the Appointing Authority will re-evaluate whether the Employee should resume regular duties.

i) The Appointing Authority or designee must arrange for safe transportation of the Employee to and from the testing site. The individual who transports the Employee must remain with him or her until the completion of the testing and the Employee is safely transported back to work or home following testing.

j) The CDOT Drug and Alcohol Coordinator receives the test results along with the Region DER (Designated Employee Representative).

k) If the test result is negative, the Employee may return to normal duty and no further action is required.

l) If the test result is positive, the Appointing Authority must determine the appropriate course of personnel action. The Appointing Authority is encouraged to consult with Employee Relations / Legal Office during this phase of the

<small>Subject</small> Procedures for Drug and Alcohol Testing	<small>Number</small> 81.1
--	--------------------------------------

process.

m) If the Appointing Authority does not take personnel action that results in the Employee's separation from employment, then the following applies:

- (1) If the Employee is Safety-Sensitive, the Appointing Authority must refer the Employee to Drug or Alcohol Counseling with a qualified Substance Abuse Professional ("SAP");
- (2) If the Employee is non-Safety-Sensitive, the Appointing Authority may refer the Employee to Drug or Alcohol Counseling with a qualified SAP.

n) The Employee who is referred to Drug or Alcohol Counseling must contact the SAP Referral Service to find a SAP to provide the counseling.

o) The Employee must successfully complete the Drug or Alcohol Counseling including but not limited to any follow-up or return-to-duty testing prescribed by the SAP and/or Appointing Authority.

3. Post-Accident

a) Safety Sensitive Employees who drive a state vehicle are subject to post accident testing. Safety sensitive Employees are subject to immediate drug or alcohol testing following any accident that meets one or more of the following:

- (1) A fatality occurs;
- (2) Bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident;
- (3) One or more of the vehicles incurs disabling damage requiring it to be towed from the scene as a result of the accident;

b) A Safety sensitive Employee who is involved in an accident must immediately report the accident to the Appointing Authority. The Appointing Authority will:

- (1) Consult with law enforcement and/or arrive at the scene of the accident to determine if testing should be completed;
- (2) Transport or arrange for transport of the Employee to the appropriate collection site.

c) A Safety-sensitive Employee who is involved in an accident must refrain from consuming alcohol until after he/she submits to an alcohol test or for 8 hours following the accident or, whichever occurs first.

d) If an alcohol test could not be completed within 2 hours of the accident, the supervisor must prepare and maintain a record stating the reason a test was not

Subject Procedures for Drug and Alcohol Testing	Number 81.1
---	----------------

promptly administered.

- e) If an alcohol test could not be completed within 8 hours, efforts to administer the test must cease and the supervisor must prepare and maintain a record stating the reason a test was not promptly administered.
- f) If a required drug test could not be completed within 32 hours, the supervisor must prepare and maintain a record stating the reason a test was not promptly administered.
- g) In lieu of ordering a post-accident test, CDOT may substitute a test administered by law enforcement officials under separate authority.

4. Random Testing. Employees who are designated as “Safety Sensitive” due to a CDL license or under FTA regulations are subject to random drug testing following CDOT procedures as implemented in accordance with applicable Federal laws, policies and regulations.

5. Positive Test Results

- a) “Positive Alcohol Test” means the result of a test that is administered by a breath alcohol technician (“BAT”) or other SAP in which an Employee’s breath or blood sample tests 0.02 BAC (Blood Alcohol Content) or greater.
- b) “Positive Drug Test” means a test in which a drug or metabolite has been confirmed to be over the cutoff limits by the testing facility and validated by the Medical Review Officer.
- c) A Safety-Sensitive Employee may be placed off duty for 24 hours from the time the alcohol test results were rendered if the results are between 0.02 and 0.039 BAC. Safety-sensitive Employees with results of 0.04 BAC or greater shall be removed from performing Safety-Sensitive duties, and be referred to a SAP.
- d) In conformance with DOT standards, CDOT will require an HHS-certified laboratory to test on a 5-panel drug test regimen, which will include marijuana (THC), Cocaine, Amphetamines, Opiates, and Phencyclidine (PCP). An Appointing Authority has the discretion, pursuant to reasonable suspicion or post-accident testing procedures, to request additional testing which are not included in the 5-panel drug test regimen.
- e) Any Employee who tests positive for alcohol or the metabolites of drugs through breath, blood, or urine may be in violation of this directive and subject to corrective and/or disciplinary action up to and including termination.
- f) An Employee who refuses to cooperate in the testing process, or who

Subject Procedures for Drug and Alcohol Testing	Number 81.1
---	-----------------------

adulterates, tampers with, or otherwise interferes with accurate testing will be treated as if his/her test returned as a positive test result, making the Employee subject to corrective or disciplinary action up to and including termination.

g) Employees who test positive will be given the opportunity through the Medical Review Officer process to provide a legitimate medical explanation, such as a valid physician’s prescription, for the positive result.

6. Return-to-Duty and Follow-Up.

a) An Appointing Authority must implement Return-to-Duty agreements for Safety-Sensitive Employees and may implement for non-Safety Sensitive Employees who violate this Directive but are not separated from employment.

b) An Appointing Authority shall consult with a SAP, which may include C-SEAP, when developing a Return-to-Duty Agreement.

c) An Employee who violates a Return-to-Duty agreement may be subject to corrective and/or disciplinary action up to and including termination.

C. Education and Training

1. All Appointing Authorities, including their Designees, and Employees who are intended to be designated as Trained Supervisors shall receive drug and alcohol training to identify reasonable suspicion. Those who complete the training shall be designated as Trained Supervisors. Supervisors of safety sensitive Employees and any other supervisors who are expected to initiate a reasonable suspicion drug and alcohol testing process must also be trained to identify reasonable suspicion to be used as a Trained Supervisor for purposes of the reasonable suspicion testing process.

2. CDOT’s Drug and Alcohol Coordinator shall be responsible for overseeing CDOT’s training and will comply with all applicable reporting requirements under federal regulations.

D. Federal Transit Administration Requirements Regarding CDOT Employees

1. CDOT Employees in the Division of Transit and Rail (“DTR”) are subject to all applicable requirements in this Directive. In addition, the following requirements in this part E. apply to Employees who are governed by the requirements of the Federal Transit Administration, pursuant to 41 U.S.C. § 8102.

2. As the designated recipient of Federal Transit Administration funds, DTR is responsible for the following:

a) Publishing a statement informing Employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specify the disciplinary actions for violations of the statement;

Subject Procedures for Drug and Alcohol Testing	Number 81.1
---	-----------------------

- b) Establishing a drug-free awareness program to inform Employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The policy of maintaining a drug-free workplace;
 - (3) Available drug counseling, rehabilitation, and Employee assistance programs; and
 - (4) The penalties that may be imposed on Employees for drug abuse violations.
- c) Providing all CDOT Division of Transit and Rail Employees with a copy of the Procedural Directive;

3. DTR shall notify the Employee in the statement required above that as a condition of employment the Employee will:

- a) Abide by the terms of the statement; and
- b) Notify CDOT of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 calendar days after the conviction;
- c) Have a sanction imposed upon, or be required to satisfactorily participate in a drug abuse assistance or rehabilitation program if convicted, as required by 41 U.S.C. § 8104; and
- d) Make a good faith effort to continue to maintain a drug-free workplace through implementation of the requirements set forth herein.

4. Within 30 days after receiving notice from an employee of a conviction pursuant to 41 U.S.C. 8102 (a)(1)(D)(ii) or 8103(a)(1)(D)(ii), the Appointing Authority shall:

- a) Take appropriate personnel action against the Employee, up to and including termination; and/or
- b) Require the Employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for those purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

E. Voluntary Disclosure of Alcohol Use or Controlled Substance Use Process

Subject Procedures for Drug and Alcohol Testing	Number 81.1
---	-----------------------

1. Employee Self-Disclosure.

- a) CDOT encourages self-disclosure of alcohol use or Controlled Substance Use as a means of supporting an Employee and maintaining a valued Employee in the workforce. Whenever practicable and with due regard for the safety of the public and CDOT Employees, CDOT encourages the rehabilitation of Employees who voluntarily seek assistance or self-report alcohol and drug abuse problems. It is CDOT’s goal that Employees will take responsibility for their own behavior and be encouraged to voluntarily seek professional assistance.
- b) An Employee may self-report an alcohol and/or drug problem to the Appointing Authority. In the absence of a documented job performance problem, an Employee in a non-safety-sensitive position who voluntarily admits to drug or alcohol problems should be strongly encouraged to seek assistance through C-SEAP or another SAP for assessment. Self-reporting by an Employee in a Safety-Sensitive position is governed by the conditions below.
- c) Self-disclosure will not alleviate alcohol and drug testing requirements as set forth in this Directive, including random testing and post-accident testing.
- d) In the context of a voluntary disclosure, CDOT shall pay for all drug and alcohol testing in connection with evaluating the Employee’s compliance to this directive. The Employee shall be responsible to pay for any SAP substance dependency assessments and education and treatment programs the SAP may mandate.

2. Appointing Authority Responsibility

- a) For all Employees, the Appointing Authority must notify the CDOT Drug and Alcohol Coordinator that the self-disclosure has occurred.
- b) An Appointing Authority must immediately remove an Employee from the Safety-Sensitive position.
- c) A Safety-Sensitive Employee who voluntarily admits to a drug and/or alcohol problem shall receive a mandatory referral by the Appointing Authority to a SAP and may be subject to return-to-duty testing.
- d) For Non-Safety-Sensitive Employees, the Appointing Authority may, within his or her discretion, enter into a Return-to-Duty Agreement with the Employee, which shall be retained by the Coordinator and remain confidential.
- e) The Appointing Authority must coordinate a return-to-duty meeting with the Employee and C-SEAP or the SAP and must receive the SAP Return-to-Duty documentation before returning the Employee to duty following self-disclosure-

Subject Procedures for Drug and Alcohol Testing	Number 81.1
---	-----------------------

related alcohol or drug treatment

3. Employee Responsibility

- a) The Employee may voluntarily disclose alcohol or Controlled Substance use to a supervisor prior to the start of their work shift or during off-duty hours and before being notified of a required test or reasonable suspicion testing.
- b) Upon voluntary disclosure, the Employee must comply with all educational and treatment programs recommended by a SAP or other qualified person.
- c) If the Employee fails to comply with the provisions of the Return-to-Duty Agreement, management/supervision intervention may result in referral to further treatment and/or corrective or disciplinary action up to and including termination.
- d) CDOT shall pay for all drug and alcohol testing in connection with evaluating the Employee's compliance to this directive. The Employee shall be responsible to pay for any SAP substance dependency assessments and education and treatment programs the SAP may mandate.

F. Confidentiality

- 1. CDOT respects the privacy of all Employees. Therefore, reasonable precautions will be taken to ensure the privacy and confidentiality of an Employee throughout the testing process and to make certain that procedures are administered fairly, consistently, and in accordance with CDOT's directives. Access to this information is limited to those who have a legitimate "need to know" in compliance with relevant laws and directives. All alcohol and drug testing information will be maintained in confidential records separate from official personnel files.
- 2. The Drug and Alcohol Coordinator will maintain test results data. Region DERs maintain negative test records for a period of one year and positive test records for a period of five years.
- 3. CDOT is prohibited from releasing individual test results, or medical information about an Employee to third parties without the Employee or his or her legal representative's written consent, or as required by applicable law.

VI. DOCUMENTS REFERENCED IN THIS PROCEDURAL DIRECTIVE AND OTHER RESOURCES

Appendix "A" Reasonable Suspicion Guidance

Appendix "B" Requirements Applicable to Safety-Sensitive Positions

CDOT Form 946a (available on the CDOT Forms Library)

Subject Procedures for Drug and Alcohol Testing	Number 81.1
---	-----------------------

CDOT Form 1200, “Pre-Employment Physical/DOT Physical/ All Drug and Alcohol Testing”

DOT Guidance: <http://www.dot.gov/odapc/documents> and <http://www.dot.gov/sites/dot.gov/files/docs/ODAPC%20EmployeeHandbook%20En.pdf>

FTA Guidance: http://www.fta.dot.gov/13057_6124.html

VII. IMPLEMENTATION PLAN

- A. This Procedural Directive shall be effective upon signature.
- B. This Procedural Directive shall be implemented by the Office of Transportation and Safety regarding DOT requirements, and the Division of Transit and Rail regarding FTA requirements. The Office of Transportation Safety and the Division of Transit and Rail will provide all applicable Employees with a copy of this Procedural Directive.
- C. All Appointing Authorities, designees and direct reports must be trained in the reasonable suspicion process within ninety days of the effective date of this Directive.

VII. REVIEW DATE

This Directive shall be reviewed on or before June 2019.

Executive Director

Date of Approval

Subject Procedures for Drug and Alcohol Testing	Number 81.1
---	-----------------------

Appendix “A”

Reasonable Suspicion Guidance

In making a determination of reasonable suspicion, the factors to be considered may include, but are not limited to, the following:

- Personal observation of specific, current, and articulable observations based on the behavior, odor, appearance and speech (“BOAS”) behavioral indicators of drug or alcohol use, physical withdrawal symptoms, and may include potential job performance issues;
- Occurrence of a serious or potentially serious work-related accident that may have been caused by human error or flagrant violations of safety, security or other operating procedures;
- Evidence of prohibited substance use, including possession, sale, delivery while on duty and/or possession of drug paraphernalia;
- Fighting (physical contact) and assaults, or erratic, aggressive or violent behavior;
- Arrest or conviction for a drug-related offense, or the identification of an Employee as the focus of a criminal investigation into illegal drug use or trafficking;
- Past admissions or statements made by the Employee;
- Information provided either by a reliable and credible source, independently corroborated or having corroborative evidence from a manager or supervisor with training and experience in identifying signs and symptoms of alcohol or drug impairment.

<small>Subject</small> Procedures for Drug and Alcohol Testing	<small>Number</small> 81.1
--	--------------------------------------

Appendix “B”

Requirements Applicable to Safety-Sensitive Positions

This table lists the types of Safety-Sensitive duties subject to DOT drug and alcohol testing relevant to CDOT under FMCSA and FTA:

Transportation Industry	Safety-Sensitive Duties
Commercial Motor Carriers (FMCSA)	Commercial Drivers’ License (CDL) holders who operate a Commercial Motor Vehicle.
Public Transportation (FTA)	Operators of revenue service vehicles, CDL-holding operators of non-revenue service vehicles, vehicle controllers, revenue service vehicle mechanics, firearm-carrying security personnel.

1. Safety-Sensitive Employees:

- A. Must not use or possess alcohol or any illicit drug while assigned to perform Safety-Sensitive functions or actually performing Safety-Sensitive functions.
- B. Must not use alcohol or any illicit drug during the 4 hours before performing Safety-Sensitive functions and 8 hours following an accident or until he/she undergoes a post-accident test, whichever occurs earlier.
- C. Must not report for service, or remain on duty if he/she:
 - Is under the influence or impaired by alcohol;
 - Has a blood alcohol concentration .04 or greater; (with a blood alcohol concentration of .02 to .039, CDOT does not permit the Employee to continue working for 24 hours);
 - Has used any illicit drug.
 - Has used alcohol within four hours of reporting for service or after receiving notice to report.
 - Is using any Controlled Substance unless used pursuant to the instructions of an authorized medical practitioner, and then only if the authorized medical practitioner has advised the Employee that the Controlled Substance will not adversely affect the Employee’s ability to perform the Safety-Sensitive function.
- D. Must not refuse to submit to any test for alcohol or Controlled Substances.

Subject Procedures for Drug and Alcohol Testing	Number 81.1
---	-----------------------

E. Must not refuse to submit to any test by adulterating or substituting the specimen.

F. Must inform their supervisor of any medication that is being taken that could interfere with performance of safety-sensitive functions.

For further guidance, see:

<http://www.dot.gov/sites/dot.gov/files/docs/ODAPC%20EmployeeHandbook%20En.pdf>

Resolution # TC-

Repeal of Policy Directives 81.0 “Drug and Alcohol Policy” and 82.0 “Implementation of FTA Regulations for a Drug and Alcohol Free Workplace”

WHEREAS, Policy Directive 81.0 and Policy Directive 82.0 were adopted by the Transportation Commission on June 19, 2003 and May 23, 2013 respectively;

WHEREAS, both Directives concern the Department’s commitment to maintain a drug and alcohol free workplace in adherence to requirements under federal and state law; and

WHEREAS, as a result of recent changes in state law regarding the legalization of marijuana, the Department undertook a wholesale review of its existing Policies and Procedural Directives governing drug and alcohol testing; and

WHEREAS, as part of the initiative to reduce the number of departmental Directives, one Procedural Directive has been developed to replace two Policy Directives (81.0 and 82.0) and four Procedural Directives (81.1, 81.2, 83.1 and 82.1); and

WHEREAS, Policy Directive 82.0 was adopted by the Commission in order to comply with a specific finding by the Federal Transit Administration as a stopgap measure until a comprehensive Procedural Directive could be finalized that met both Federal Transit Administration and Federal Highway Administration requirements; and

WHEREAS, both Policy Directive 81.0 and 82.0 are no longer necessary given the consolidated Procedural Directive 81.1.

NOW THEREFORE BE IT RESOLVED, the Commission herein repeals 81.0 “Drug and Alcohol Policy” and 82.0 “Implementation of FTA Regulations for a Drug and Alcohol Free Workplace” as being no longer necessary given the consolidation of all relevant documents into Procedural Directive 81.1.



COLORADO
Transportation Commission

Division of Transit & Rail
4201 East Arkansas Avenue, Room 227
Denver, CO 80222-3406

DATE: August 21, 2014
TO: Transportation Commission
FROM: Mark Imhoff and Debra Perkins-Smith
SUBJECT: Approval of Updated Policy Directive 1607.0, "Rail Corridor Preservation Policy"

Purpose: To approve updated Policy Directive 1607.0 which provides identifying criteria to be used in defining passenger and/or freight rail corridors of State interest and describes passenger and/or freight rail activities in which CDOT may engage.

Action: Pass a resolution approving Policy Directive 1607.0 "Rail Corridor Preservation Policy."

Background: This Policy Directive was approved by the Transportation Commission on June 30, 2000 and has not been updated since that time. Policy Directive 1607.0 continues to add value to the Department for rail corridors as an implementation tool under the current State Freight and Passenger Rail Plan (2012) and guidance for the Statewide Long Range Transportation Plan, which will be finalized in 2015.

Details: This Policy Directive was revised by DTR and DTD and includes minor revisions only. It preserves the original intent and decision structure, and updates references to federal law from the previous regulations found in the Transportation Efficiency Act for the 21st Century ("TEA-21") to the current regulations based on Moving Ahead for Progress in the 21st Century ("MAP-21"). The terms have been updated from the earlier version which implemented the rail corridor preservation as a new concept. This revision reflects current practice based on fourteen years of experience.

Key Benefits: The Policy Directive provides transparency to external public and private partners and guidance to internal staff implementing its terms. Among the improvements to the PD are the following highlights:

- Red-lined draft P. 2, section B. 1. a): the inclusion of planning and environmental linkage (PEL) study or similar study in the consideration of corridor significance.
- Red-lined draft P. 2, section B. 2. b): changing the language regarding private or community support from: "Lack of expressions of community support may not prevent CDOT from preserving a corridor" to the more proactive "Private support may be measured in terms of committed resources, personnel or other economic development strategies."

Options and Recommendations:

- Approve Policy Directive on the Rail Corridor Preservation Policy (Staff-supported).
- Alternatively, request additional changes or clarification and revisit next month.



Next Steps: When the Policy Directive is approved, DTR and DTD will provide it to all CDOT staff involved in its implementation.

Attachments: (1) Draft Resolution; (2) Red-line Version of Policy Directive 1607.0 showing changes, and (3) clean version of Policy Directive 1607.0



COLORADO DEPARTMENT OF TRANSPORTATION		<input checked="" type="checkbox"/> POLICY DIRECTIVE <input type="checkbox"/> PROCEDURAL DIRECTIVE	
Subject			Number
Rail Corridor Preservation Policy			1607.0
Effective	Supersedes	Originating Offices	
TBD	6/30/2000	Division of Transportation Development and Division of Transit & Rail	

I. PURPOSE

The purpose of this Policy Directive is to provide a framework for determining under what conditions CDOT will participate in passenger and/or freight rail transportation by identifying criteria to be used in defining passenger and/or freight rail corridors of State interest and describing passenger and/or freight rail activities in which CDOT may engage.

II. AUTHORITY

Transportation Commission pursuant to § 43-1-106(8)(a), C.R.S.

§ 43-1-104, C.R.S., (authority and responsibilities of Division of Transit & Rail)

§ 43-1-1301, *et seq.* C.R.S., (providing authority to CDOT to acquire abandoned rail rights-of-way)

III. APPLICABILITY

This Policy Directive applies to all Divisions and Regions of the Colorado Department of Transportation.

IV. POLICY

A. The Colorado Department of Transportation shall participate in passenger and/or freight rail transportation in a manner consistent with its legal authority, when such participation serves to advance statewide transportation or economic interests, which include but are not limited to:

1. Preserving rail corridors for future passenger and/or freight rail use where the state can avoid the purchase of an equivalent corridor in the future.
2. Passenger and/or freight rail transportation may be needed in certain corridors to supplement the highway system and to provide adequate mobility, market access and travel capacity.
3. Passenger and/or freight rail transportation can be demonstrated to be a cost-effective and/or environmentally preferable mode of transportation of significance to communities.

4. Preserving and/or enhancing existing freight rail service to reduce the state highway maintenance costs, and to avoid the transportation of displaced rail freight which may increase deterioration of the state highway system.

B. CDOT identifies state significant rail corridors in the State Freight & Passenger Rail Plan and the Statewide Long Range Transportation Plan. The following criteria shall be used to identify those corridors:

1. Existing or potential future demand for passenger/freight rail services.

a) Corridor significance can be presumed in the corridor if it is recommended in an adopted alternative analysis/feasibility study, planning & environmental linkage (PEL) study or similar study.

b) Corridor significance can be presumed if the rail corridor is within, adjacent or parallel to a transportation corridor identified in the Statewide Long Range Transportation Plan as needing significant capacity improvements.

c) Designation of a corridor for freight rail purposes should only be considered when freight rail is necessary for the economic health of a community, area or region. This is determined based on the following factors:

(1) When there are no other reasonable modes of transport that can economically serve the needs of the community; or

(2) When abandonment of freight service in a corridor significantly impacts a parallel state facility.

d) If the rail corridor has present/future use as a significant statewide or national freight corridor.

2. Local and regional support for corridor preservation.

a) Public support may be measured in terms of adopted land use plans supportive of rail transit or freight rail, local transportation and financial commitments.

b) Private support may be measured in terms of committed resources, personnel or other economic development strategies.

C. If a corridor is identified as a state significant rail corridor, CDOT shall, where feasible and prudent, design and construct roads and related structures to preserve right-of-way sufficient to accommodate future passenger / freight rail service.

1. In addition, if a corridor is identified as a state significant rail corridor, CDOT may engage in, but is not restricted to, preserving rail right-of-way through:

a) Purchase: CDOT may allocate funds to purchase currently operating, embargoed railroad rights-of-way, rail lines identified/proposed for abandonment, or newly designated rail corridors for rail.

b) Purchase/Lease Back: CDOT may purchase right-of-way/track and sell or lease back to another entity to operate in the corridor.

c) Coordination with Railroad Companies: Engage private railroad companies in partnership to ensure that private railroad improvements in state significant rail corridors accommodate reasonably anticipated future transportation activities that serve the state transportation interests.

d) Cost Sharing: CDOT may share the cost of reserving railroad right-of-way for future transportation improvements with other private or public entities.

D. If a corridor is not identified as a rail corridor of state significance, but is identified in an adopted regional plan, the state may:

1. Cost Share: Share the cost of reserving right-of-way for future transportation improvements with other private or public entities.

2. Incorporate future rail into highway design and construction: Where feasible and prudent, design and construct roads and related structures to preserve right-of-way sufficient to accommodate future passenger / freight rail service.

E. The following criteria should be considered when prioritizing the above activities for funding:

1. Magnitude of impacts upon adjacent highways. An estimate of the increased or decreased maintenance and reconstruction cost implications of diverting rail freight to truck transport on parallel state highway corridors should be evaluated considering present and future needs.

Subject Rail Corridor Preservation Policy	Number 1607.0
--	------------------

2. Immediacy of the possible abandonment of an existing rail line that may result in subsequent private/public activity encroaching on the existing or future rail right-of-way. An estimate should be made to determine how soon actions may occur by public or private developers or railroads that are likely to jeopardize an existing or future rail corridor.
3. The estimated price and cost-effectiveness of acquiring an existing or future corridor or preserving the option to implement rail service in an existing corridor.
4. Public-Private Partnership (PPP or P3). The opportunity for participation in a public-private partnership that is beneficial to the traveling or freight-shipping public.

F. Any financial commitment to purchase rail corridors shall be subject to such rail corridors being identified, justified and included in the State Freight and Passenger Rail Plan and the Statewide Long Range Transportation Plan. Such rail corridors shall be considered for acquisition consistent with § 43-1-1301 *et seq.*, C.R.S. Rail corridors shall be acquired only after specific budgetary action has been approved pursuant to Policy Directive 703.0.

V. IMPLEMENTATION PLAN

1. This policy shall be implemented jointly by the Division of Transit and Rail and the Division of Transportation Development.
2. DTD and DTR shall ensure that all employees who will be referencing this Directive shall be made aware of its revisions, including but not limited to all DTR staff, DTD Multimodal Planning Branch Mobility Unit staff, Region Planners, Safety & Traffic Engineering (Section 130 Program), Regional Transportation Directors, and the Senior Management Team.

VI. REVIEW DATE

This Policy Directive shall be reviewed on or before June 2019.

Secretary, Transportation Commission

Date

COLORADO DEPARTMENT OF TRANSPORTATION		<input checked="" type="checkbox"/> POLICY DIRECTIVE <input type="checkbox"/> PROCEDURAL DIRECTIVE	
Subject Rail Corridor Preservation Policy			Number 1607.0
Effective <u>TBD</u>	Supersedes <u>6/30/2000</u>	Originating Offices Division of Transportation Development <u>and</u> <u>Division of Transit & Rail</u>	

I. PURPOSE

The purpose of this Policy Directive is to provide a framework for determining under what conditions CDOT will ~~consider participating participate~~ in passenger and/or freight-rail transportation by identifying criteria to be used in defining passenger and/or freight rail corridors of State interest and describing passenger and/or freight rail activities in which CDOT may engage.

II. AUTHORITY

Transportation Commission pursuant to § 43-1-106(8)(a), C.R.S.

§ 43-1-104, C.R.S., (authority and responsibilities of Division of Transit & Rail)

§ 43-1-1301, *et seq.* C.R.S., (providing authority to CDOT to acquire abandoned rail rights-of-way)

III. APPLICABILITY

This Policy Directive applies to all Divisions and Regions of the Colorado Department of Transportation.

IV. POLICY

A. ~~It is the policy of t~~The Colorado Department of Transportation ~~shall to~~ participate in passenger and/or freight rail transportation in a manner, consistent with its legal authority, when such participation serves to advance statewide transportation or economic interests, which include but are not limited to: -~~State transportation interests may be served by participating in rail transportation for the following reasons:~~

1. ~~Preserving rail corridors for future use may save money since the cost to preserve a corridor for future transportation purposes is often far less than having to purchase an equivalent corridor in the future.~~ Preserving rail corridors for future passenger and/or freight rail use where the state can avoid the purchase of an equivalent corridor in the future.
2. Passenger and/or freight rRail transportation may be needed in certain corridors to supplement the highway system and to provide adequate mobility, market access and travel capacity.
3. Passenger and/or freight rRail transportation can be demonstrated to be a cost-effective and/or environmentally preferable mode of transportation of significance to communities. ~~in certain situations.~~
4. Preserving and/or enhancing existing freight rail service ~~by preventing a railroad from being abandoned can to~~ reduce the state highway maintenance costs, ~~on state highways;~~ since and to

avoid the transportation of displaced rail freight ~~with~~which may increase deterioration of the state highway system.

B. Policy Direction CDOT ~~will identify~~identifies state significant rail corridors in the State Freight & Passenger Rail Plan and the Statewide Long Range Transportation Plan. The following criteria shall be used to identify ~~those State Significant Rail~~ corridors:

1. Existing or potential future demand for passenger/freight rail services.

a) ~~Short term demand~~Corridor sSignificance can be ~~presumed~~ assumed in the corridor if it is recommended in an adopted alternative analysis/feasibility study, planning & environmental linkage (PEL) study or similar study.

b) ~~Long term demand (20 years or longer)~~Corridor sSignificance can be ~~presumed~~ assumed if the rail corridor is within, adjacent or parallel to a transportation corridor identified in the Statewide Long Range Transportation Plan as needing significant capacity improvements.

c) Designation of a corridor for freight rail purposes should only be considered when freight rail ~~serves as an economic lifeline to~~ is necessary for the economic health of a ~~the~~ community, area or region. This is determined based on the following factors:

(1) When there are no other reasonable modes of transport that can economically serve the needs of the community; or

(2) When abandonment of freight service in a corridor significantly impacts a parallel state facility. ~~;~~ or

d) ~~When~~If the rail corridor has present/future use as a significant statewide or national freight corridor.

2. Local and regional ~~public and/or private~~ support for corridor preservation ~~of the corridor~~.

a) ~~Local and regional Public~~ support ~~can~~may be measured in terms of adopted land use plans supportive of rail transit or freight rail, ~~and~~ local transportation and financial commitments.

b) Private support may be measured in terms of committed resources, personnel or other economic development strategies.

~~b) Lack of expressions of community support may not prevent CDOT from preserving a corridor.~~

C3. If a corridor is identified as a state significant rail corridor, CDOT shall, where feasible and prudent, design and construct roads and ~~roadway~~-related structures to preserve an envelope right-of-

way sufficient to accommodate future passenger / freight rail service ~~or other transportation purposes planned in the corridor.~~

41. In addition, if a corridor is identified as a state significant rail corridor, CDOT may engage in, but is not restricted to, preserving rail right-of-way through the following methods of participation in either passenger or freight rail transportation corridors:

a) ~~Corridor Preservation Purchase~~: CDOT may allocate funds, ~~within its authority,~~ to purchase currently operating, ~~or~~ embargoed railroad rights-of-way, rail lines identified/proposed for abandonment, or newly ~~designated~~ rail corridors for rail ~~or other transportation purposes.~~

b) ~~Rail Right-of-Way/Track Ownership Purchase/Lease Back~~: CDOT may purchase right-of-way/track and sell or lease back to another entity to operate ~~rail or other transportation services in the corridor.~~

c) ~~Coordinate Coordination~~ with Railroad Companies: Engage private railroad companies in partnership to ensure that private railroad improvements in state significant rail corridors accommodate reasonably anticipated future transportation activities that serve the state transportation interests.

d) Cost Sharing: CDOT may share the cost of reserving railroad right-of-way for future transportation improvements with other private or public entities.

5D. If a corridor is not identified as a rail corridor of state significance, but is identified ~~on~~ in an adopted regional plan, the state may: ~~engage in but is not limited to the following activities:~~

a)1. Cost Sharing: Share the cost of reserving right-of-way for future transportation improvements with other private or public entities.

b)2. Incorporate future rail into highway design and construction: Where feasible and prudent, design and construct roads and related structures to preserve ~~an envelope right-of-way in order to accommodate future rail service or other transportation purposes planned in the corridor. sufficient to accommodate future passenger / freight rail service.~~

6.E. The following criteria should be considered when prioritizing the above activities for funding:

a)1. Magnitude of ~~negative~~ impacts upon adjacent highways. An estimate of the increased or decreased maintenance and reconstruction cost implications of diverting rail freight to truck transport on parallel state highway corridors should be evaluated ~~for now and in the future. considering present and future needs.~~

b)2. Immediacy of the possible abandonment of an existing rail line ~~or that may result in subsequent~~ private/public activity ~~that may encroaching~~ on the existing or future rail right-of-way.

e) ~~Immediacy of possible jeopardy.~~

Subject Rail Corridor Preservation Policy	Number 1607.0
--	------------------

An estimate should be made to determine how soon actions may occur by ~~CDOT, public or~~ private developers or railroads that are likely to jeopardize ~~and an~~ existing or future rail corridor.

~~3. The Estimated cost price and cost effectiveness of acquiring an existing or future corridor or preserving the option to implement rail service in an existing corridor. The cost effectiveness of a particular activity should be analyzed.~~

~~4. Public-private Partnership (PPP or P3). The opportunity for participation in a public-private partnership that is beneficial to the traveling or freight-shipping public.~~

~~CF. It is the policy of the Commission that a~~ Any financial commitment to purchase rail corridors shall be subject to such rail corridors being identified, justified and included in the State Freight and Passenger Rail Plan and the Statewide Long Range Transportation Plan. ~~and that s~~ Such rail corridors shall be considered for acquisition consistent with C.R.S. § 43-1-1301 et seq., C.R.S. Rail corridors shall be acquired only after specific budgetary action has been approved pursuant to Policy Directive 703.0.

FISCAL IMPACT

~~This does not represent a significant shift of existing resources but would be considered on a corridor/project basis through the Regional and Statewide planning process.~~

~~The degree to which this policy can be implemented is affected by the availability of new funds that can be used for this purpose.~~

V. IMPLEMENTATION PLAN

This policy shall be implemented by

~~all Divisions of Engineering and Maintenance and~~

1. The Division of Transit and Rail and the Division of Transportation Development.

2. DTD and DTR shall ensure that all employees who will be referencing this Directive shall be made aware of its revisions, including but not limited to all DTR staff, DTD Multimodal Planning Branch Mobility Unit staff, Region Planners, Safety & Traffic Engineering (Section 130 Program), Regional Transportation Directors, and the Senior Management Team.

VI. REVIEW DATE

This directive shall be reviewed on or before June 2019.

Secretary, Transportation Commission

Date

Resolution # TC-

Adoption of Policy Directive 1607.0 “Rail Corridor Preservation Policy”

WHEREAS, pursuant to § 43-1-106(8)(a), C.R.S., the Colorado Transportation Commission is charged with formulating general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state; and

WHEREAS, the Transportation Commission approved Policy Directive 1607.0 on June 30, 2000; and

WHEREAS, the Rail Corridor Preservation Policy Directive provides identifying criteria to be used in defining passenger and/or freight rail corridors of State interest and describes passenger and/or freight rail activities in which CDOT may engage; and

WHEREAS, as part of the Department’s initiative to update older Policies and Procedural Directives, the Division of Transit and Rail (“DTR”) and the Division of Transportation Development (“DTD”) have collaborated to update Policy Directive 1607.0; and

WHEREAS, the revisions to the Policy Directive, while minor, reflect the ongoing commitment of the Department to work with external public and private stakeholders and execute a transparent process based on defined criteria for abandonment or preservation; and

WHEREAS, Policy Directive 1607.0 provides value to both Department staff and external partners regarding rail preservation for the implementation of the State Freight and Passenger Rail Plan and guidance for the Statewide Long Range Transportation Plan.

NOW THEREFORE BE IT RESOLVED, the Commission herein approves updated Policy Directive 1607.0 “Rail Corridor Preservation Policy”

Transportation Commission Secretary

Date



COLORADO
Transportation Commission

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

DATE: August 21, 2014
TO: Transportation Commission
FROM: Mark Imhoff
SUBJECT: Approval of New Policy Directive 1605.0, Interregional Express Bus Program

Purpose To approve a new Policy Directive which establishes the Division of Transit & Rail (“DTR”) reporting procedures to the Transit & Intermodal Committee (“T&I Committee”) of the Colorado Transportation Commission (“Commission”) regarding the Interregional Express Bus service (“IX Program”).

Action Pass a resolution approving Policy Directive 1605.0 on the Interregional Express Bus Program.

Background In 2009, the General Assembly passed Senate Bill 2009-094, which created the Division of Transit & Rail. The legislation, codified at § 43-1-117.5, C.R.S., sets forth the powers and duties of the Division under the Executive Director, including the operation of interregional transit service and establishing schedules and fares. The Policy Directive adheres to the statutory framework and further sets forth the reporting requirements with the Transit & Intermodal Committee and the Transportation Commission. At the January 2014 meeting, the Transportation Commission passed Resolution #TC-3133 approving the Implementation of the Interregional Express Bus program. Throughout the development of the IX Program, the discussion included a governance model with DTR administering the program, the T&I Committee providing oversight and the Transportation Commission retaining ultimate control of critical business decisions. Included in Resolution # TC-3133 was a provision to monitor the success of the program for three years of operation, and give the Transportation Commission the option at that time to continue service, modify service or cancel service.

Details This Policy Directive was developed by DTR and reviewed by the Transit & Intermodal Committee at its July 2014 meeting.

Key Benefits The Policy Directive defines roles and responsibilities associated with the IX Bus program, and provides transparency and accountability for internal processes and external information.

Options and Recommendations

- Approve Policy Directive on the Interregional Express Bus Program (Staff-supported).
- Alternatively, the Commission could determine that changes to the Directive are necessary, or determine that a Directive is an unnecessary document, and the guidance in the Directive could be provided in an internal manual.

Next Steps When the Policy Directive is approved, DTR will provide it to all CDOT staff involved in its implementation.

Attachments Draft Policy Directive and Resolution



COLORADO DEPARTMENT OF TRANSPORTATION		<input checked="" type="checkbox"/> POLICY DIRECTIVE <input type="checkbox"/> PROCEDURAL DIRECTIVE
Subject Interregional Express Bus Service (IX Service) Program		Number 1605.0
Effective TBD	Supersedes n/a	Originating Office Division of Transit and Rail (DTR)

I. Purpose

To establish the Division of Transit and Rail (“DTR”) reporting procedures to the Transit and Intermodal Committee (“Committee”) of the Colorado Transportation Commission (“Commission”) regarding the interregional express bus service (“IX Program”).

The Division of Transit and Rail (“DTR”) IX Program was developed to augment and connect population and employment centers and local bus systems along the I-25 and I-70 Mountain Corridors and connecting routes to better integrate with a statewide transit system.

II. Authority

Transportation Commission, § 43-1-106(8)(a), C.R.S.

§ 43-1-117.5(3)(a)(II), C.R.S.

§ 43-4-811 and 812, C.R.S.

III. Applicability

This Policy Directive applies to the CDOT Division of Transit and Rail (“DTR”).

IV. Procedure

A. General Provisions

1. The IX Program was developed to augment CDOT’s commitment to provide the best multi-modal transportation system in the country. The IX Program fills a critical need by connecting with local bus systems serving populations and employment centers to better integrate a statewide transit system.
2. DTR shall initiate the IX Program on a base budget of \$3 m/yr. (FASTER Transit funds) for operations expenditures. The IX Program will be limited to this annual allocation plus collected fare revenue and shall cover the total annual operating costs of the service using these funds.
3. DTR shall set targets for fare box recovery with the goal of attracting ridership to the IX Program and providing an alternative to driving that entices riders to reduce driving. The IX Program shall thus set a goal of achieving a minimum fare box recovery of 20% of operating costs within two years of service start up.

Subject	Number
Interregional Express Bus Service (IX Service) Program	1605.0

4. DTR shall manage the IX Program, oversee the service Contractor, monitor performance, and remain flexible to adjust the service in order to maximize performance, increase effectiveness, and achieve farebox recovery goals.

5. DTR, with the Office of Communications, shall develop a public outreach program to regularly solicit input from the public on the service in general, and specifically solicit input before implementing any route, service or fare modifications.

B. Powers, Duties and Responsibilities

1. Transportation Commission Oversight. The Commission shall:

a) Monitor the performance and success of the Program for three years of operation from the service start-up date (see Resolution TC-3133, “Approving the Implementation of the Interregional Express Bus, Service” dated January 16, 2014). The Commission shall determine at this time whether to continue, modify or cancel it.

b) Review and determine whether the need for capital expenditures beyond the approved IX Program (\$3 million plus fare revenue) is warranted.

c) Approve all expenditures from the Cumulative Reserve fund.

2. Transit and Intermodal Committee Oversight. The Committee shall:

a) Meet a minimum of four times a year;

b) Monitor the performance of the Program and serve as the recommending body for any substantial modification, addition or deletion of services, including capital needs;

c) Evaluate reports and monitor the progress of DTR meeting milestones;

d) Recommend the IX Program budget annually to the Commission, including the review of any capital expenditures which vary from those previously approved;

e) Recommend to the Commission allocations from the cumulative reserve beyond the IX Program annual budget; and

f) Provide status updates at least annually to the Commission.

3. DTR Responsibilities.

a) The Director of DTR will manage the Program, monitor performance, remain flexible to adjust to maximize performance, be responsible for all day-to-day decision-making, and oversee all components of the Program, including, but not limited to:

Subject	Number
Interregional Express Bus Service (IX Service) Program	1605.0

- (1) Updating the CDOT Chief Engineer and Executive Director on a regular basis by apprising him/her of the status of performance goals and service changes;
- (2) Overseeing compliance with all applicable federal and state laws and regulations, including those arising from the Americans with Disabilities Act;
- (3) Implementing Intergovernmental Agreements and Memoranda of Understanding with governmental and partner entities;
- (4) Setting schedules and fare structures;
- (5) Conducting an annual IX Program assessment (or twice annually if needed) of service coverage, routes, schedules and fares; and modify the service plan when justified.
- (6) Preparing an annual budget (fiscal year);
- (7) Purchasing of buses and other capital infrastructure elements;
- (8) Negotiating and managing contractual agreements with a private provider for the annual operations and maintenance;
- (9) Coordinating a communication plan with the Office of Communications;
- (10) Implementing a public outreach program with the Office of Communications to regularly solicit input from the public on the IX Program in general, and specifically solicit input before implementing any route, service or fare modifications;
- (11) Implementing a customer service plan with providers;
- (12) Facilitating Park-n-Ride improvements with regions;
- (13) Monitoring Contractors' Performance;
- (14) Monitoring Risk Assessment; and
- (15) Developing an annual work plan;

b) Director of DTR Reporting. The Director of DTR shall report to the Committee on a quarterly basis. The quarterly performance reports shall include the following data by corridor and Program total based on the fiscal year:

- (1) Ridership;
- (2) Fare box revenue;

Subject	Number
Interregional Express Bus Service (IX Service) Program	1605.0

- (3) Fare box recovery ratio;
- (4) On-time performance;
- (5) Safety: collisions per 100,000 miles; and
- (6) Public input received.

V. Implementation Plan

1. This Policy Directive will be effective immediately upon signature.
2. The Originating Office shall confirm within one week of the effective date that all employees in the DTR have received a copy of this Policy Directive.

VI. Review Date

This Policy Directive shall be reviewed on or before August, 2018.

Secretary, Transportation Commission

Effective Date

Resolution # TC-

Adoption of Policy Directive 1605.0 “Interregional Express Bus Service (IX Service) Program”

WHEREAS, pursuant to § 43-1-106(8)(a), C.R.S., the Colorado Transportation Commission is charged with formulating general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state; and

WHEREAS, in 2009, the General Assembly passed Senate Bill 2009-094, codified at § 43-1-117.5, C.R.S., which created the Division of Transit & Rail; and

WHEREAS, the legislation set forth the powers and duties of the Division under the Executive Director, including the operation of interregional transit service and establishing schedules and fares; and

WHEREAS, at its January 2014 meeting, the Transportation Commission passed Resolution #TC-3133 approving the Implementation of the Interregional Express Bus program (the “IX Program”) within the Division of Transit and Rail ; and

WHEREAS, Resolution # TC-3133 further included a provision to monitor the success of the program for three years of operation, and give the Transportation Commission the option at that time to continue service, modify service or cancel service; and

WHEREAS, the Program’s governance model has been based on DTR administering the program, the Transit & Intermodal Committee providing oversight, and the Transportation Commission retaining ultimate control of critical business decisions; and

WHEREAS; Policy Directive 1605.0 defines the roles and responsibilities of the Program’s implementation and provides transparency and accountability for internal processes and external information.

NOW THEREFORE BE IT RESOLVED, the Commission herein approves Policy Directive 1605.0 “Interregional Express Bus Service (“IX Program)”

Transportation Commission Secretary

Date



COLORADO
Transportation Commission

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

DATE: August 21, 2014
TO: Transportation Commission
FROM: Mark Imhoff, Division of Transit & Rail
SUBJECT: Amend TC-3133 to Change IX Operator Contract Term

Purpose: The purpose of this memo is to request an amendment to Transportation Commission Resolution #TC-3133, allowing DTR to submit a waiver to the State Purchasing Director to lengthen the Interregional Bus Operator contract term beyond normal State purchasing standards.

Action Approval to amend Resolution # TC-3133 permitting DTR to request a waiver from the State Purchasing Director to lengthen the IX operator contract term length from five years to 10 years (three-year term plus seven (7) one-year options), and to contract as such if the waiver is granted.

Background Transportation Commission Resolution #TC-3133 approved by the Commission on January 16, 2014 specifically authorized a private operator be procured, with a contract term of a three-year (3) agreement with two (2) one-year options.

Procurement and Contract Services has advised the Division of Transit & Rail (DTR) that a waiver to lengthen the contract term is justified. This type of Personal Services Contract could be managed more effectively and more economically advantageous if CDOT received a waiver from the State Purchasing Director to increase the contract period beyond the standard State five-year contracting limit, and extend to the ten-year wavier limit (three-year term with seven one-year options).

Details On July 24, 2014 the IX Service Provider Solicitation was awarded to Dallas, TX based Horizon Coach Lines; an operating unit of TMS (Transportation Management Systems) of Sandy Spring, MD. TMS is a worldwide major event transportation planner/ provider and FEMA's Emergency Evacuation contractor. Locally, Horizon maintains a 50+ fleet of MCI motor coaches at their Golden, CO facility and provides:

- ✓ Fixed route casino transportation between Denver and Black Hawk/Central City
- ✓ Paratransit contractor for RTD with a maintenance facility for RTD's paratransit vehicles in the South Platte River Valley.
- ✓ Contracted transit provider for United Airlines, shuttling Company flight crews between Denver International Airport and the United Airlines Flight Training Center, 24 hours/day, 7 days per week.
- ✓ They also provide charter services for hire and convention/event transportation services in the Denver Metropolitan Area for their parent, TMS.

Prior to contractor interviews and selection, "best and final offers" were solicited for both the five-year and ten-year terms.

Under either contracting scenario, the contractor will be subjected to annual performance reviews using baseline metrics developed by DTR using FTA National Transit Database before any one-year options are executed. The metrics include:



- On Time Performance
- Road Failures per 100,000 miles
- Collisions per 100,000 miles
- Complaints per 1,000 passenger
- Injuries per 100,000 miles
- Fatalities per 100,000 miles
- Property damage per 100,000 miles
- Fare box recovery ratio

Key Benefits A ten-year term offers the following key benefits:

- A ten year contract may incentivize more competitive bids, allowing amortization of capital and other expenses over ten years instead of five.
- The expected life of the coaches/buses is 10 - 12 years, and under a ten-year contract term the contractor is incentivized to better maintain the vehicles.
- Economic advantage of controlling cost-of-living adjustments over a ten year period versus five.
- There are no procedural variances in performance metrics monitoring, liquidated damages, or contractual penalties. DTR has developed baseline performance goals using the FTA National Transit Database.
- With a longer contract term, the Service Provider would have greater vested interest and ownership in the long term success of the IX.

Options and Recommendations

- Approve the revised Interregional Express Bus resolution (Staff-supported). Pros: key benefits above; cons: do not realize key benefits above.
- Reject the revised resolution, and proceed under the current resolution (three-year term with two one-year options). Pros: none; cons: do not realize key benefits above.

Next Steps If approved, DTR will submit a waiver to the State Purchasing Director requesting a ten-year term. If a waiver is granted, DTR will contract with Horizon Coach Lines for a three-year term with 7 one-year options; if rejected, DTR will contract for a three-year term with 2 one-year extensions as previously approved by the TC.

Attachments Revised Resolution reflecting the above ten-year term.



Resolution #TC-

Approving Implementation of the Interregional Express Bus

Approved by the Transportation Commission on: _____

1-WHEREAS the CDOT mission is to “provide the best multi modal transportation system for Colorado”; and

2- WHEREAS, the Colorado Legislature created the Division of Transit & Rail in 2009 (Senate Bill 09-094) vesting in CDOT the authority to develop, operate and integrate transit service into the statewide transportation system, and to establish and modify fares and schedules for transit services provided directly by the state or contracted for by the state; and

3- WHEREAS the FASTER legislation (Senate Bill 09-108, Section 43-4-206) provides ten million dollars per year for statewide transit including the maintenance, operation, or administration of transit-related projects; and

4- WHEREAS transit service connectivity is lacking due to service gaps exist between local transit systems; and

5- WHEREAS the I-25 and I-70 corridors carry high volumes of travelers and experience high levels of congestion, and therefore have significant transit demands; and

6- WHEREAS the Transportation Commission directed the development of an interregional express bus plan in December, 2012; and

7- WHEREAS the development of an interregional express bus plan included stakeholder outreach.

8- WHEREAS, upon approval by the Transportation Commission, CDOT is prepared to begin interregional express bus service in FY 2015 after it contracts with an operator and obtains fleet vehicles.

9-WHEREAS, the Transportation Commission approved TC Resolution #3133 on January 24, 2014, and more advantageous contracting terms have been identified.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby approves that CDOT shall provide interregional express bus service, through a contract with a private operator, and approves that service will be initiated in the following areas:

- I-25 corridor between Colorado Springs and Denver, and Fort Collins and Denver.
- The I-70 corridor between Glenwood springs and Denver.

BE IT FURTHER RESOLVED that an initial FY 2014 Start-Up Fund of \$10.9 Million shall be established from the following sources:

- \$5.5 Million of unallocated and/or withdrawn FASTER Statewide Transit funds.
- \$4.9 Million of unallocated SB 1 funds dedicated to transit.
- \$0.5M from Miscellaneous Sales; proceeds from the sale of the FREX buses (a SB 1 grant).

BE IT FURTHER RESOLVED that \$3.0 Million per year be allocated, beginning in FY 2015, from the FASTER Statewide Transit funds to be used (along with fare revenues) for the operations, maintenance and capital needs associated with the interregional express bus program.

BE IT FURTHER RESOLVED that the FY 2014 Start-Up Fund be used to:

- Purchase of 13 Over-the-Road Coaches (buses); estimated at \$7.8 Million.
- Design and construct needed Park-and-Ride improvements; estimated at \$1.0 Million.
- Procure miscellaneous capital (if needed); \$250,000.
- Fund other start-up operating costs (communications plan, branding, compliance engineer, miscellaneous); estimated at \$280,000.
- Establish the IX Reserve (contingency) Fund from the remainder of the Start-Up Fund; estimated at \$1.57 Million; under Transportation Commission control.

BE IT FURTHER RESOLVED that a private entity to operate the IX service and maintain the bus fleet be solicited and procured with the following terms:

- Request a waiver from the State Purchasing Director to increase the State standard from five years to ten years.
- If the waiver is granted, contract for a term of three (3) years with seven (7) one-year options;
- If the waiver is not granted, contract for a term of three (3) years with two (2) one-year options.
- Funded through the FASTER Statewide Transit allocation (above).

BE IT FURTHER RESOLVED to monitor performance and success for three years of operation, and give the Transportation Commission the option at that time to continue service, modify service or cancel service.



COLORADO
Transportation Commission

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

DATE: August 21, 2014
 TO: Transportation Commission
 FROM: Kyle Lester, Division of Highway Maintenance
 SUBJECT: Addition to the FY 15 over \$50,000 project list

Purpose

Region 4 Maintenance Section 1 has discovered issues with structure G-18-BN, on SH 86 at MM 106.025 in the City of Elizabeth. Repairs to this structure are of vital importance to the safety and mobility as well as commerce in Elizabeth.

Action

The Division of Highway Maintenance is asking the Commission to approved the attached resolution so that work on this vital structure can commence immediately.

Background

Colorado Revised Statute 24-92-109 requires CDOT to submit any project which will be performed by CDOT forces costing between \$50,000 and \$150,000 to the Transportation Commission for approval. PD 1000.0 puts the statute into Policy with the same requirement, PD 1000.0 will be repealed at this meeting of the TC, and those requirements incorporated into PD 703. Region 4, Section 1 has made an estimate for this project costing \$100,000, and taking maintenance forces from Region 4, Section 1, and Region 1, Section 5 approximately 6 weeks to complete.

Details

Staff Maintenance on behalf of Region 4 respectfully request immediate Transportation Commission approval for the performance of \$100,000.00 in necessary bridge repairs to structure G-18-BN, Hwy. 86 MP. 16.025. This structure is located in the City of Elizabeth. The repairs to this structure are crucial. The required repairs include and are not limited to the replacement of all hanger brackets that support the City of Elizabeth's sewer line currently affixed to the structure. This work will also include building concrete curbs on both sides of the bridge and drilling and installing drain pipes. Estimated repair time is 5-6 weeks. All work will be performed by Region 4 Bridge Crew in collaboration with Region 1 Special Crew. The repair work to this structure is essential to maintaining safe travel for the traveling public throughout this area.

Region 4 - Greeley				
Highway	Begin MP	End MP	Type	Estimated Cost
86	16.025	N/A	Structure G-18-BN repair	\$100,000
			Region 4-Greeley Total	\$100,000

Sufficient funds exist within the appropriate MPA's to pursue this additional project. The project is in accordance with the statute, directive, and all other requirements.

Attachments

Resolution titled - Addition to Fiscal Year 2015 over \$50,000 project list approval



Resolution #TC-

Addition to Fiscal Year 2015 over \$50,000 project list approval

Approved by the Transportation Commission on: August 21, 2014

WHEREAS, under Senate Bill 98-148, public projects supervised by the Colorado Department of Transportation (CDOT) are exempt from the requirements of the “Construction Bidding for Public Projects Act;” and

WHEREAS, Section 24-92-109, Colorado Revised Statutes, as amended, requires CDOT to prepare cost estimates for projects to be undertaken by CDOT maintenance crews that exceed \$50 thousand, but are less than or equal to \$150 thousand for submission to the Transportation Commission for review and approval; and

WHEREAS, CDOT staff have prepared cost estimates for this projects to be done in Fiscal Year 2015 as detailed in the memorandum entitled; Addition to FY 15 over \$50,000.00 project list dated July 24, 2014; and

WHEREAS, the funding for these projects are contained in the Fiscal Year 2015 Budget.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission has reviewed the cost estimate, as contained in the official agenda, and approves CDOT Maintenance Forces undertaking the project therein.

Region 4 - Greeley				
Highway	Begin MP	End MP	Type	Estimate
86	16.025	N/A	Structure repair G-18-BN	\$ 100,000.00
		Total - Greeley		\$ 100,000.00
		Statewide Total		\$ 100,000.00

Sufficient funds exist within the appropriate MPA’s to pursue these projects. The projects are in accordance with the directive and all other requirements.

Herman Stockinger, Secretary
Transportation Commission of Colorado