



COLORADO
Department of Transportation
Division of Engineering Support
Project Development

DATE: September 27, 2016

TO: Colorado Transportation Commission

FROM: Christine ^{CR}Rees, Administrative Hearing Officer

SUBJECT: Rulemaking Hearing on Proposed Changes to 2 CCR 601-11
Rules Governing Practice and Procedure of the Transportation

Background

Pursuant to § 43-1-106(6) and § 43-1-106(8)(k), C.R.S., the Colorado Transportation Commission has the authority to adopt rules in relation to its meetings and the transaction of business. On July 21, 2016, the Transportation Commission, by Resolution No. 16-7-9, authorized an Administrative Hearing Officer to conduct a hearing on proposed changes to the rules (Exhibit 1B). On September 12, 2016, the Hearing Officer held a rulemaking hearing to receive public comment on the proposed rule changes.

Summary of Hearing and Factual Findings

Pursuant to § 24-4-103, C.R.S., the State Administrative Procedure Act, and the Transportation Commission Resolution No. 16-7-9, a public hearing was held on September 12, 2016, in the auditorium at the CDOT Headquarters building, in Denver, Colorado. A court reporter was present, and a transcript of this hearing is attached. Acting as your delegated Administrative Hearing Officer, I opened the hearing at 1:03 p.m. No one other than Department personnel and the Office of the Attorney General attended the hearing, and no testimony was offered other than the testimony noted below from Department personnel and the Office of the Attorney General.

Marie Nakagawa from the Office of Policy and Government Relations reviewed the exhibits and demonstrated how CDOT complied with the requirements of the State Administrative Procedure Act (Transcript pages 6-11). The Statement of Basis, Purpose, and Statutory Authority for the rules is contained in Exhibit 6A. A cost-benefit analysis was not required (Exhibit 3D). Ms. Nakagawa also noted that CDOT:

- Obtained proper hearing delegation from the Commission (Exhibit 1B).
- Filed a timely Notice of Rulemaking with the Secretary of State (Exhibit 2A).
- Published the Notice in the Colorado Register (Exhibit 2C).

- Posted information about the rulemaking hearing on the CDOT website on August 9, 2016 (Exhibit 4).
- Notified the representative group and the interested parties of the date, time and location of the hearing and requested comments (Exhibits 5A-E).
- Will maintain a permanent file of the rulemaking record (Exhibit 6B).
- Posted timely notice in the rulemaking hearing the lobby of the Department Headquarters Building, (Exhibit 6C).

Zachary Alexander, the Commission Liaison, then explained which rule changes were being proposed by the Commission (Transcript pages 12-16).

Mr. Alexander explained that most of the proposed changes are based on the passage of HB 16-1172, contained in Exhibit 8, which reestablished the Efficiency and Accountability Committee, clarified its role, and expanded its membership. Mr. Alexander explained that those changes are shown in Exhibit 2B. Mr. Alexander also explained other changes indicated in Exhibit 7, including the following: that the annual election of officers will be the last order of the business at the Commission's regular June meeting; the elected officers' terms will begin on July 1 and expire on June 30 of the following year; members of standing committees will begin serving by the July regular meeting; the Commission will ratify appointments to standing committees by resolution; clarification that electronic recording of executive sessions shall be kept for ninety days according to statute; removing the Safety Committee as it no longer exists; and the inclusion of petitions for Declaratory Orders pursuant to § 24-4-105(11), C.R.S.

Otherwise, minor modifications have been made to the rules, including revisions to rule numbers (Transcript pages 12-16; Exhibits 2B and 7).

Andy Frohardt from the Office of the Attorney General was present at the hearing, and testified that the process the Department had followed in this rule-making met the requirements of the State Administrative Procedure Act.

Findings and Conclusions of Law

I have reviewed the entire record of this proceeding. The record consists of all 9 exhibits from the September 12, 2016 hearing. I find that:

1. All requirements of the State Administrative Procedure Act, § 24-4-103, C.R.S., have been satisfied.
2. There is sufficient evidence in the record to support the proposed rules as submitted in Exhibits 2B and 7.
3. The Commission has the authority to adopt the Proposed Rules.

Decision

The record of these proceedings must be reviewed prior to adopting any rule, and any action must be based upon, and supported by, the record. Copies of the entire exhibit packet are available for review in

the Transportation Commission Office. The record supports adoption of the proposed rule changes, and pursuant to § 24-4-103, C.R.S., you may choose to adopt these rule changes.

Having reviewed the entire record of this proceeding, including Exhibits 1 through 9 and having heard oral testimony and reviewed any written testimony provided, and being fully apprised of this matter, acting as Administrative Hearing Officer in this matter, I recommend that the Transportation Commission adopt the proposed rules.

I have prepared a resolution for adoption of the proposed rules.

cc: Shailen P. Bhatt, CDOT Executive Director
Herman Stockinger, Commission Secretary

