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**CLEAN TRANSIT ENTERPRISE BOARD MEETING - JANUARY 31, 2022  
SCHEDULE & AGENDA**

- I. Welcome and Introduction (10 minutes)**  
*All board members*
- II. Background (5 minutes)**  
*Kay Kelly, Chief, Innovative Mobility (CDOT)*
- III. Powers and Duties of the Board (10 min)**  
*Herman Stockinger, Deputy Director and Director of Policy and Government Relations (CDOT)*
- IV. Bylaws and Articles of Organization (10 min)**  
*Herman Stockinger, Deputy Director and Director of Policy and Government Relations (CDOT)*
- V. Board Officers (5 min)**  
*Kay Kelly, Chief, Innovative Mobility (CDOT)*
- VI. CTE Revenue Estimates and Start up Loan Agreement (5 min)**  
*Jeff Sudmeier, Chief Financial Officer (CDOT)*
- VII. Rulemaking (10 min)**  
*Herman Stockinger, Deputy Director and Director of Policy and Government Relations (CDOT)*
- VIII. Board Ethics Training (30 min)**  
*Kathy Young, Senior Assistant Attorney General, State of Colorado*
- IX. Wrap Up and Next Steps (5 min)**



**COLORADO**

Department of Transportation

# Clean Transit Enterprise Board

January 31, 2022



# AGENDA

Topic	Presenter
Welcome, Board Member & CDOT Staff Introductions (10 min)	
Background (5 min)	Kay Kelly, CDOT
Powers and Duties of the Board (10 min)	Herman Stockinger, CDOT
Bylaws and Articles of Organization (10 min)	Herman Stockinger, CDOT
Board Officers (5 min)	Kay Kelly, CDOT
CTE Revenue Estimates and Start up Loan Agreement (5 min)	Jeff Sudmeier, CDOT
Rulemaking (10 min)	Herman Stockinger, CDOT
Board Ethics Training (30 min)	Kathy Young, COAG
Wrap Up and Next Steps (5 min)	



# Board Composition, Terms and Vacancies

**Composition:** The governing board of the enterprise consists of nine (9) members. The Governor shall appoint six (6) members with the advice and consent of the Senate. The Governor shall make reasonable efforts to consider members that reflect the state's geographic diversity when making appointments.

**Term:** Those members appointed by the Governor serve for terms of four years

- However, for the first term, three (3) of the appointed Members shall serve an initial term of three (3) years.
- The Transportation Commission Member Appointee shall continue to serve as an Enterprise Board Member for as long as they serve as a Commissioner.
- The Members serving as designees of the Department of Transportation, the Colorado Energy Office, and the Department of Public Health and Environment shall serve for as long as they hold their agency positions or are designated to serve.

**Vacancies:** Members appointed to fill a vacancy will serve the remainder of the unexpired term of the former member.



# Members of the Clean Transit Enterprise Board

## For terms expiring 9/28/2024

**Matt Frommer** (Denver): Member with an expertise in zero-emissions transportation, motor vehicle fleets or utilities

**Bonnie Trowbridge** (Berthoud): Member representing a public advocacy group that has transit or comprehensive transit expertise

**Vacant:** Member representing a transportation-focused organization that services an environmental justice community

## For terms expiring 9/28/2025

**Mark Garcia** (Pagosa Springs): Member of the Transportation Commission and have statewide transportation expertise

**Cris Jones** (Boulder): Member representing an urban area, having transit expertise

**David Averill** (Telluride): Member representing a rural area having transit expertise

## Agency Appointments

**Shoshana Lew:** CDOT Executive Director

**Kelly Blynn:** Colorado Energy Office designee

**Richard Coffin:** Colorado Department of Public Health & Environment designee



# Background



# SB21-260 Electrification Investments



**\$733 million of new fee revenue supports 3 new electrification and charging infrastructure Enterprises:**

## Charging Infrastructure & Electric Vehicle Equity

- ◆ New ‘**Community Access**’ **Enterprise** in Colorado Energy Office (CEO).
- ◆ Build charging infrastructure in communities across the State, and support electric vehicle and eBike adoption in low and moderate income communities.
- ◆ **\$310 million** investment
- ◆ Paired with existing CO EV Infrastructure Fund - \$115 million and potential federal funding

## Fleet Electrification Incentives

- ◆ New ‘**Clean Fleet**’ **Enterprise** in CO Department of Public Health and Environment (CDPHE)
- ◆ Support fleet replacement (delivery trucks, TNCs, school buses, and other light/medium/heavy duty vehicles) with incentives to meet climate and air quality goals
- ◆ Support CDPHE’s Mobile Source Program to complement vehicle investment.
- ◆ **\$289 million** investment

## Public Transit Electrification

- ◆ New “**Clean Transit**” **Enterprise** in Colorado Department of Transportation (CDOT).
- ◆ Support electrification of public transit through electrification planning efforts, facility upgrades, fleet vehicle replacements and associated charging infrastructure.
- ◆ **\$134 million** investment





# CDOT's ZEV Goals

## PD 14 Environmental Impact Objectives & Targets

CDOT will work collaboratively with other state agencies and local partners to reduce statewide GHG pollution from the transportation sector by **26% by 2025, 50% by 2030, 90% by 2050** relative to 2005 statewide GHG pollution levels.

Collaborate with other state agencies to increase electric vehicle registrations to support a future fleet of at least **940,000 light-duty EVs by 2030**.

Work with other state departments, transit agencies, and electric utilities to meet the transit vehicle goals specified in its 2020 Electric Vehicle Plan to **convert the state transit fleet to 100% ZEV by 2050, with an interim target of at least 1,000 ZEVs by 2030**.

Collaborate with other state agencies, local governments, and private companies to increase the percentage of total **state highway miles within a 30-mile travel buffer of DC fast-charging stations** from 40% in FY 2020 to 100% by FY 2030.

Coordinate with other state agencies, the Colorado Scenic & Historic Byways Commission, local governments, and individual site hosts to **increase the number of Colorado Scenic & Historic Byways classified as electrified byways** from 3 in FY 2020 to 26 by the end of FY 2025.

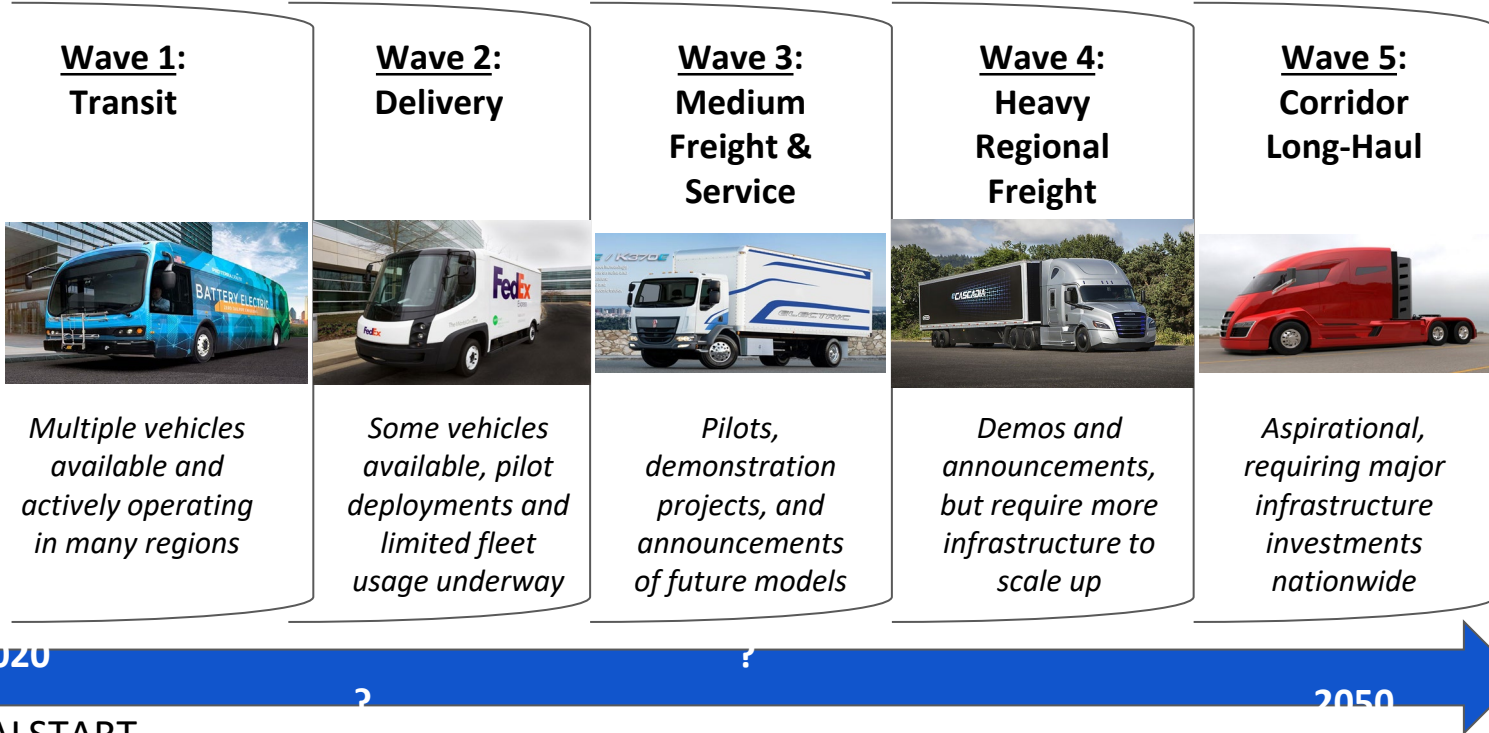






# M/HD ZEV Phase-In

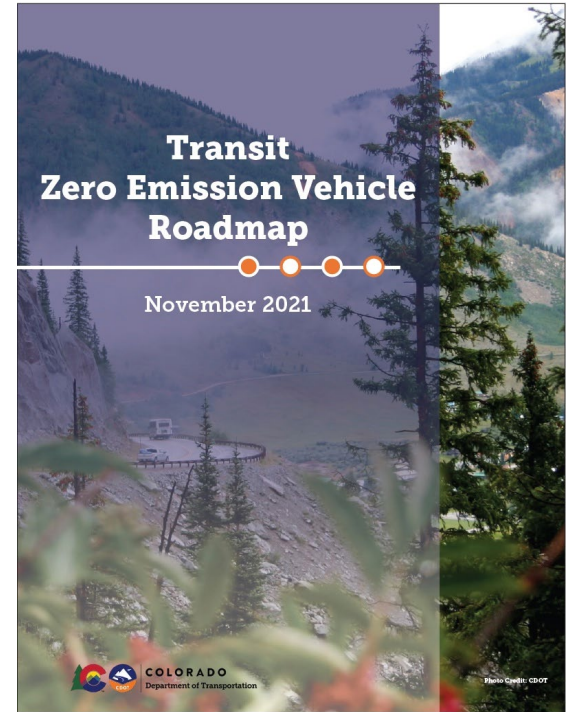
ZEVs are likely to be adopted in multiple “waves”, but we need to prepare our policies and investments now in order to maximize the benefits in future years.





# Transit ZEV Roadmap

- Developed over the course of 2021
- Statewide assessment of barriers and opportunities for transit fleet electrification
- Inventory of current fleet make-up, timeline for achieving state adoption targets, and analysis of the cost to transition
- Detailed Presentation at the next CTE Board Meeting





# Purpose, Authority and Powers & Duties of the Clean Transit Enterprise Board



# Business Purpose of the Clean Transit Enterprise

The Clean Transit Enterprise is created to serve the primary business purpose of reducing and mitigating the adverse environmental and health impacts of air pollution and greenhouse gas emissions produced by retail deliveries by:

- Supporting the replacement of existing gasoline and diesel public transit vehicles with electric motor vehicles,
- Providing the associated recharging infrastructure for electric transit fleet motor vehicles,
- Supporting facility modifications that allow for the safe operation and maintenance of electric transit motor vehicles,
- Funding planning studies that enable transit agencies to plan for transit vehicle electrification



# Powers and Duties/Reporting

- Promulgate rules to impose a “Clean Transit Retail Delivery Fee” and govern the process for awarding and overseeing grants.
- Notify the Department of Revenue by March 15 each year of the amount of the fee that would begin July 1.
- Issue Grants (and Loans and Rebates); Issue Revenue Bonds.
- Accept Loans from CDOT and reimburse the Department of any loans received.
- By June 1, 2022 publish a 10-Year Plan that “details how the enterprise will execute its business purpose and estimate the funding available for ten years.
- Create, maintain and regularly update on its website a “public accountability dashboard” that includes the funding status and progress toward completion of each project.”
- Prepare an annual report that details activities of the enterprise and present the report to the Transportation Commission and House and Senate Transportation Committees.



# Choosing Projects and Seeking Public Input

- Issue grants, loans, rebates, revenue bonds to fund:
  - Clean transit planning efforts
  - Facility upgrades necessary for the safe operation and maintenance of electric motor vehicles used by public transit providers
  - The construction of electric motor vehicle charging infrastructure used by public transit providers
  - The replacement of motor vehicles used by public transit providers that are not electric motor vehicles by electric motor vehicles
    - If electric motor vehicles are not practically available, by compressed natural gas motor vehicles, if at least ninety percent (90%) of the fuel for compressed natural gas motor vehicles will be recovered methane
- Award grants on a competitive basis based on written criteria established by the enterprise in advance of grant submission deadlines.
- The Enterprise shall engage regularly regarding its project and activities with the public, specifically reaching out to and seeking input from communities, including but not limited to disproportionately impacted communities, and interest groups that are likely to be interested in the projects and activities



# Other Powers and Duties

In addition to any other powers and duties already mentioned, the board has the following general powers and duties:

- To adopt bylaws for the regulation of its affairs and the conduct of its business
- To acquire, hold title to, and dispose of real and personal property
- To employ and supervise individuals, professional consultants, and contractors as are necessary in its judgement to carry out its business purpose
- To contract with any public or private entity
- To seek, accept, and expend gifts, grants, donations
- Contract with the Air Pollution Control Division of the Department of Public Health and Environment to develop proposed rules that will support the Enterprise's business services, including remediation services, in a manner that maintain compliance with the Federal and State statutes, rules and regulation governing air quality.





# Board Bylaws



# Bylaws and Articles of Organization

## Enterprise Bylaws - details how the Board shall function

- Board Composition and Details
- Frequency and Method of Holding Meetings
- Open Meetings and Open Records
- Officers and Staff
- Fiscal Year and Budget
- Miscellaneous Provisions

## Articles of Organization - mostly reiterates statute

- Business Purpose
- TABOR Exemption
- Powers and Duties
- Revenues and Expenditures
- Need to Adopt Bylaws



# Board Officers and Staff



# Elected Positions

**Chairperson:** The principal duties of the Chairperson shall be to preside at all meetings of the Enterprise Board, to serve as the principal spokesperson for the Enterprise, and to aid the Secretary in coordination of meetings and agendas, and to perform all duties incident to the office

**Vice-Chairperson:** The principal duty of the Vice-Chairperson shall be, in the absence or disability of the Chairperson, to perform all the duties of the chairperson, and when acting shall have all the powers of the Chairperson. The Vice-Chairperson shall also have such powers and perform such duties as from time to time may be prescribed by the Membership

The Board may appoint other officers as it deems necessary and appropriate



# CDOT Staff Support Positions

## **Secretary:** Jennifer Uebelher (backup - Deseri Scott)

- a member of the CDOT staff
- shall keep the records of the Enterprise Board
- shall perform all of the other administrative duties usually pertaining to this office, including taking the minutes of Enterprise Board meetings, and coordinating all communications, announcements, etc.
- shall work with the Chair to coordinate Enterprise Board meeting details, including securing a location, posting the agenda, board packets, and notification of meetings

## **Program Administrator:** Kay Kelly

- a senior member of the CDOT staff
- assigned to provide strategic management and support for the Enterprise Board.
- shall serve as a point of contact for the Enterprise and the Enterprise Board.
- may suggest policies, procedures, and agenda items for the Board's consideration and shall see that all policies, directions and orders of the Board are carried out.



# Startup Loan Agreement & Revenue Estimates



# Clean Transit Enterprise Expected Revenue

## Clean Transit Retail Delivery Order Fee

FY 2022-23 to FY 2031-32

### Clean Transit Retail Delivery Order Fee -

Fiscal Year	Rate Per Trip	Total
FY 2021-22	\$0.0000	\$0
FY 2022-23	\$0.0300	\$8,280,329
FY 2023-24	\$0.0308	\$9,132,872
FY 2024-25	\$0.0308	\$9,834,347
FY 2025-26	\$0.0323	\$11,134,125
FY 2026-27	\$0.0331	\$12,308,104
FY 2027-28	\$0.0339	\$13,617,560
FY 2028-29	\$0.0339	\$14,712,367
FY 2029-30	\$0.0357	\$16,716,268
FY 2030-31	\$0.0366	\$18,549,225
FY 2031-32	\$0.0375	\$20,606,029
<b>10-Year Total</b>		<b>\$134,891,225</b>





# Clean Transit Enterprise Loan

- The Enterprise currently has no operating budget and no source of funding.
- Staff has prepared a loan (SB21-260 requires funds to be repaid and prohibits a grant). The loan was approved by the Transportation Commission on December 16, 2021, contingent on approval by the Enterprise Board.
- Repayment starts September 1, 2022 and the deadline for the principal amount and the interest (2% annually) on the unpaid principal balance is June 30, 2023. The Enterprise has the option to prepay all or a portion of the loan principal without penalty.



# Clean Transit Enterprise Loan

Expense Description	Quantity	FY22 Funding
Director	5.0% of 1.0 FTE	\$6,500
Office of Innovative Mobility (OIM) Chief	2.5% of 1.0 FTE	\$3,500
OIM Staff	50.0% of 1.0 FTE	\$37,500
Program Assistant	5.0% of 1.0 FTE	\$2,750
Division of Accounting and Finance (DAF) Staff	15.0% of 1.0 FTE	\$15,000
Policy Staff	2.5% of 1.0 FTE	\$2,500
Board Travel/Reimbursement	\$1,000 per mtg (6)	\$6,000
Meeting Expenses	\$100 per mtg (6)	\$600
<b>Total</b>		<b>\$73,500</b>



# Rulemaking



# Rulemaking for Enterprise Fee Setting & Grant Process

## Statutory Purpose for Rule: Set the Fees & Govern Grant Process

- “Clean Transit Retail Delivery Fee” of 3 cents for retail deliveries of tangible personal property.
- Govern the process for awarding and overseeing grants (staff recommendation uses current State Management Plan process)

## Process and Timeline

- Open Rule: Enterprise Opens Rule late February, authorizes CDOT Hearing Officer to conduct Public Hearing
- File Rule: CDOT staff “files the rule” with the Secretary of State
- Public Hearing: CDOT staff conducts public hearing per the Administrative Procedures Act in late March or early April
- Adopt Rule: Enterprise Board adopts Rule in mid April
- Effective Date: As early as May 31.



# Board Ethics Training



# **ANNUAL BEST PRACTICES TRAINING**

**Nonattainment Area Air Pollution Mitigation Enterprise  
Board Meeting - January 27, 2022**

**Kathy Young  
First Assistant Attorney General  
Transportation Unit**

## Best Practices

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- Section 24-3.7-102, C.R.S., requires annual training in several areas including:
  - ◆ Statutory powers and duties;
  - ◆ Identifying and managing conflicts of interest;
  - ◆ Understanding the requirements of the Colorado Open Records Act and open meetings laws.



## GOVERNING STATUTE

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Section 43-4-1303, C.R.S. – A copy of the statute is attached.

- TABOR-exempt Enterprise
- Government-owned business within CDOT.
- Type 1 Transfer



## Conflict of Interest

- Rules of Conduct – A Commissioner who receives no compensation other than a per diem allowance . . . “shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.”

Section 24-18-108.5, C.R.S.

- Voluntary Disclosure – Two step process:

- ◆ You can make a written disclosure to the Secretary of State that adequately describes the financial interest; and
- ◆ Immediately before the vote, you state for the record the fact and summarize the nature of the interest.

Section 24-18-110, C.R.S.

## CORA – In a Nutshell

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All public records **shall** be open for inspection by any person at reasonable times, except as provided in part 2 or as otherwise provided by law.

- ◆ Section 24-72-203, C.R.S.



## Key Concept – “Public Record”

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- “...includes all writings...
- ...made, maintained, or kept...
- ...by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or political subdivision of the state...”
- Section 24-72-202(6)(A)(I), C.R.S.

## Is My Record a “Public Record”?

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- What is a public record? Definition is very broad and includes:
  - ◆ Internal and external communications, such as might take place among agency staff, between staff and a board, between board members, between staff, between members of one agency and another agency, and between members of the public/3<sup>rd</sup> parties.
  - ◆ No limitation on means of communication. A “public record” includes both hard-paper documents and electronic records/documents.

## Record, but Not a “Public Record”

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- CORA exempts numerous documents from the definition of “public records.” Those are found in section 24-72-202(6), C.R.S.
  - ◆ Most exemptions will not apply to this Board.
  - ◆ Work product prepared for elected officials is exempt.

## Public Record Denial of Inspection

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- Basis for denying inspection of “public records” found in section 24-72-204, C.R.S.
- Reasons are many, and range from “contrary to any state statute” and court order, to reasons in the public interest such as test questions and scoring keys from licensing exams, security arrangements, trade secrets, certain employment records, etc.

## Deliberative Process Privilege

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- One such exception is the deliberative process or governmental privilege found in section 24-72-204(3)(a)(XIII), C.R.S. and covers records “if the material is so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government, unless the privilege has been waived.”



## Other Reasons to Deny

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- Discretionary denial – Section 204(2)(a) – “may deny... unless otherwise provided by law...”
- Mandatory denial – Section 204(3)(a) “shall deny the right of inspection, unless otherwise provided by law...”
- Know your organic act and any related statutes for additional reasons to withhold. Don't forget relevant federal statutes.
- Be ready to explain denial – the applicant may request a written statement of the grounds for denial.

## But I Want them NOW!

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- The requestor must have access to the records within a “reasonable time.”
- “a ‘reasonable time’ shall be presumed to be three working days or less.”
  - ◆ Sec. 24-72-203(3)(b), C.R.S.
- The period may be extended by seven working days upon finding of “extenuating circumstances.”
  - ◆ Sec. 24-72-203(3)(b), C.R.S.

## Extenuating Circumstances

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- Section 203(3) spells out what constitutes “extenuating circumstances” and “shall be provided to the person making the request within the three-day period.”
- Most common: “A request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the three-day period without substantially interfering with the custodian’s obligation to perform his or her other public service responsibilities.” Section 203(3)(b)(III).
- In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.” Section 24-72-203(3)(c), C.R.S.

## Remedies

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### Options for Denial of Access Include:

- Fourteen day “cooling off” period – Section 24-72-204(5)(a), C.R.S.
- Requestor may apply to the district court for an order, with court costs and reasonable attorney fees to the prevailing party. Sec. 24-72-204(5), C.R.S.
- Custodian may sue to obtain a declaratory order determining status of records for CORA request where it cannot be determined. **NO ATTORNEYS FEES!** Section 24-72-204(6), C.R.S.

## Open Meetings Law (OML)

- “It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.” Section 24-6-401, C.R.S.
- To give citizens an expanded opportunity to become fully informed on issues of public importance
- To allow citizens to participate in the legislative decision-making process that affects their personal interests



## What is a Meeting?

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### A Meeting is Defined by the Act as:



Any kind of **gathering**, convened to discuss **public business**, in person, by telephone, electronically, or by other means of communication.



Section 24-6-402(1)(b)

## When Are Meetings Considered Public?

- All meetings of two or more members of a state public body at which any **public business** is discussed or at which any **formal action** (public policy, rule making, legislation, policy making, interpretation of policies, rules, regulations, guidance documents or the like) may be taken are declared to be public meetings open to the public at all times. Section 24-6-402(2)(a)
- To determine whether “public business” is discussed, Court looks to policy-making responsibilities and powers of the state body

*Board of County Comm'rs v. Costilla County Conservancy Dist*, 88 P.3d 1188, 1189 (Colo. 2004); *Intermountain Rural Elec. Assn. v. Colo. PUC*, 298 P.3d 1027 (Colo. App. 2012)



## What is Proper Notice?

- Notice must be “full and timely.” Section 24-6-402(2)(c)
- “Full notice” is objective, to be interpreted in light of an ordinary member of the community to whom it is directed . . . to provide fair notice to members of that community. *Town of Marble v. Darien*, 181 P.3d 1148 (Colo. 2008).
- Open Meetings Law imposes no requirement that specific advance notice be given of formal actions that might be taken. Notice is sufficient as long as the items actually considered at the meeting are reasonably related to the subject matter indicated by the notice. *Id.*
- Posting must occur no less than 24 hours prior to the meeting





# What Does the Notice Include?

- Date and time of the meeting
- Location of the meeting
- Agenda for meeting
- Specific agenda information if possible
- ADA Considerations?



## Minutes

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- Minutes are prepared for all meetings. Section 24-6-402(2)(d).
- Minutes are open to the public for review. *Id.*
- Minutes of meeting during which an executive session is authorized shall only reflect the topic discussed in executive session. *Id.*



**Email discussions between members regarding public business are subject to public inspection.**

## What is Executive Session?

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- Meeting of the board without the public present
- Can only be used for discussions of specific topics
- Cannot be used to take any formal action
- Exception to Open Meetings Law



# Privileged Communications

- Attorney-client privileged discussions are confidential by the Open Meetings Law as well as state statute C.R.S §13-90-107(1)(b) and federal law.
- Privileged communications during Executive Session may be required to be electronically recorded



## Executive Session is a Limited Discussion?

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- Members may only discuss the topic(s) that were announced during the open public meeting and which were specifically referred to executive session
- Must follow exact process

# Examples of Topics

- **Conferences with an attorney representing the state public body** concerning disputes involving the public body that are the subject of pending or imminent court action, concerning specific claims or grievances, or for purposes of receiving legal advice on specific legal questions.
- Matters required to be kept **confidential** by federal law or rules, state statutes, or in accordance with the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices;
- Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;
- Determining positions relative to matters that may be subject to negotiations with employees or employee organizations; developing strategy for and receiving reports on the progress of such negotiations; and instructing negotiators;
- All meetings held by members of a state public body subject to this part 4 to consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee shall be open to the public unless said applicant, official, or employee requests an executive session.

## What Cannot Occur in Executive Session?

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- Adoption of any proposed policy, position, resolution, rule, regulation, or formal action. Section 24-6-402(3)(a).
- No additional matters may be discussed.



# When Don't You Need a Meeting?

- Chance meetings
- Social gatherings at which discussion of public business is not the central purpose
- Other events in which public business is not the central purpose

Section 24-6-402(e), C.R.S.





# Failure to Comply With OML

- **Invalidation.** Decisions of the Board may be invalidated should the Board fail to adhere to the requirements of the Open Meetings Law. This may occur in the case of a regularly-scheduled meeting that has not been properly noticed or in a situation where two or more Board members discussed an agenda item in a context outside of a regular meeting. Section 24-6-402(8), C.R.S.
- **Willful Misconduct.** Members who engage in “meetings” outside the regularly scheduled public meetings may be found to have been engaged in “willful misconduct” and, therefore, be subject to removal from the Board.
- **Negative Publicity/Litigation.** Failure to follow the requirements of the Open Meetings Law may result in the Board, and its members, being questioned publicly concerning the content of the alleged outside conversations. Not only does this impact negatively upon the Board but, moreover, should litigation ensue, members may be required to testify against other members either in deposition or at hearing regarding the alleged failure to comply with the law. The remedies available to a party who has been successful in proving a violation of the Open Meetings Law include injunctive relief, costs, and attorney fees. See § 24-6-402(9), C.R.S.
- **Release of Otherwise Confidential Information.** A court may open the portion of the executive session that was held in violation of the Open Meetings Law. Consequently, otherwise confidential information discussed in executive session may be disclosed publicly. Section 24-72-204(5.5), C.R.S; see, e.g., *Gumina v. City of Sterling*, 119 P.2d 527, 532 (Colo. App. 2004) (holding that if a local public body fails strictly to comply with the requirements set forth to convene an executive session, it may not avail itself of the protections afforded by the executive session).

## Virtual Open Meetings

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- Open meetings may be held virtually.
- Public comments are not required, but there are some tips if a board does want to have a public comments be part of an open meeting.





## Wrap Up and Next Steps



- Scheduling Poll for Next Meeting Forthcoming
- Proposed Topics for Next Meeting:
  - Transit Zero Emission Vehicle (ZEV) Roadmap
  - Enterprise 10 Year Plan Development
  - Opening of the Rulemaking to:
    1. “promulgate rules to set the amount of the Clean Transit Retail Delivery Fee and
    2. govern the process by which the Enterprise accepts applications for awards, and oversees grants, loans, and rebates”
- Upcoming Deadlines:
  - June 1, 2022 - publish and post to its website a ten-year plan that details how the Enterprise will execute its business purpose during Fiscal Years 2022-23 through 2031-32, and estimates the amount of funding needed to implement its plan
- The CTE Board will likely need to meet monthly through June 2022 in order to make progress on several required decision points and to meet statutory deadlines.



# Clean Transit Enterprise Information

Home Travel Center News Safety Performance Business Center **Programs** Projects About CDOT Library

Search... Search

A-Z



**COLORADO**  
Department of Transportation

<https://www.codot.gov/programs/innovativemobility/cte>

## Programs

Home | Programs | Innovative Mobility | Clean Transit Enterprise

### Resources

- Mobility Technology
- Mobility Services
- Electrification
- Transit and Rail
- Electric Vehicle Ride & Drive Event
- Clean Transit Enterprise

## Clean Transit Enterprise

To support Colorado's transit electrification through planning efforts, transit site upgrades, procurement of electric transit buses, and deployment of associated charging infrastructure.



### Contact Us

[cdot\\_cleantransitenterprise@state.co.us](mailto:cdot_cleantransitenterprise@state.co.us)

### Resources

- Board Appointments
- Enterprise Funds
- Board Powers & Duties

### Upcoming Meetings

January 31, 2022 2:30 - 4:30 pm

[Link to YouTube Live Stream](#)





THANK YOU!



# CLEAN TRANSIT ENTERPRISE BYLAWS

## **Article I. Board of the Clean Transit Enterprise**

A. Enterprise Board. All of the powers of the Enterprise, as described in Section 43-4-1203, *et seq.*, C.R.S., and as otherwise provided by law, shall be vested in the Clean Transit Enterprise Board (“Enterprise Board”). The Enterprise Board shall manage the business and affairs of the Enterprise. The Enterprise Board shall consist of the members as determined pursuant to Section 43-4-1203(2)(a)(I), C.R.S. (each shall be a “Member” and collectively, the “Members”). Members of the Enterprise Board shall have the ability to vote.

### B. Composition and Qualifications

1. The Enterprise Board consists of nine (9) Members.

2. The Governor shall appoint six (6) Members with the advice and consent of the Senate. The Governor shall make reasonable efforts to consider Members that reflect the state’s geographic diversity when making appointments.

- a. One such Member must be a member of the Transportation Commission and shall have statewide transportation expertise.
- b. One Member must represent an urban area and have transit expertise.
- c. One Member must represent a rural area and have transit expertise.
- d. One Member must have expertise in zero-emissions transportation, motor vehicle fleets, or utilities.
- e. One Member must represent a transportation-focused organization that serves an environmental justice community.
- f. One Member must represent a public advocacy group that has transit or comprehensive transportation expertise.

3. The three (3) Members not appointed by the Governor are:



- a. The Executive Director of the Department of Transportation or the Executive Director's designee.
- b. The Director of the Colorado Energy Office or the Director's designee.
- c. The Executive Director of the Department of Public Health and Environment or the Executive Director's designee.

C. Performance of Duties. By acceptance of the office, each Member of the Enterprise Board shall be deemed to have accepted the obligation to perform their duties in good faith and in a manner they believe to be in the best interests of the Enterprise.

D. Reimbursement. The Enterprise Board may provide for reimbursement of the Members for reasonable and necessary expenses incurred on behalf of the Enterprise consistent with State Fiscal Rules, but the Members shall otherwise serve without compensation.

E. Disclosures. Members of the Enterprise Board shall make financial disclosures and avoid conflicts of interest, as provided by law and any policies adopted by the Enterprise.

F. Term of Office.

1. The Transportation Commission Member Appointee shall continue to serve as an Enterprise Board Member for as long as they serve as a Commissioner.
2. The Governor's Appointees, other than the Transportation Commissioner Appointee, shall serve for terms of four (4) years. However, for the first term, three (3) of the appointed Members shall serve an initial term of three (3) years. These Members are the Member with expertise in zero-emissions transportation, motor vehicle fleets, or utilities, the Member representing a transportation-focused organization that serves an environmental justice community, and the Member representing a public advocacy group that has transit or comprehensive transportation expertise.
3. The Members serving as designees of the Department of Transportation, the Colorado Energy Office, and the Department of Public Health and Environment shall serve for as long as they hold their agency positions or are designated to serve.

4. Vacancies. Members appointed to fill a vacancy will serve the remainder of the unexpired term of the former Member.
5. Removal. Any Enterprise Board member who fails to attend three (3) consecutive Enterprise Board meetings without being excused may be subject to recommendation to the Governor for removal from the Enterprise Board.

## **Article II. Meetings of the Board**

- A. Place of Meetings. The regular or special meetings of the Enterprise Board or any committee designated by the Enterprise Board shall be held at the principal office of the Enterprise or at any place that a majority of the Enterprise Board, or any such committee, designates.
- B. Regular Meetings. The Clean Transit Enterprise shall hold regular meetings at such dates, times, and locations, including virtual meetings, as the Enterprise Board shall determine, but no less than four (4) times per calendar year. Members of the Enterprise Board are expected to attend all regular Enterprise Board meetings unless excused in advance.

Any Enterprise Board Member may participate in any regular or special meeting through telephonic and virtual participation, provided that all directors participating are able to hear each other during the meeting.

The Chair of the Enterprise Board (“Chair”) may postpone or advance the time and date of any regular meeting for a period not to exceed one week. The Enterprise Board may remove items from the agenda or rearrange the order of the agenda items at any time. Items may be added to the agenda only with adequate public notice prior to the meeting, as provided by law.

- C. Special Meetings. Special meetings may be called by the Chair or by a majority of the Members of the Enterprise Board with three (3) days advance notice by mail, electronic mail, or telephone. In an emergency, 24 hours of advance notice by telephone or electronic mail is sufficient, unless otherwise provided by law.
- D. Notice of Meetings. A notice of the time, date, and location of a meeting will be sent to each Enterprise Board Member by the Program Manager for regular meetings at least two (2) weeks in advance. A public notice of the meeting shall also be posted to the Clean Transit Enterprise website at least two (2) weeks in advance of the meeting.

- E. Quorum. A quorum of the Clean Transit Enterprise Board shall be a majority of the voting Enterprise Board Members. If a quorum of the Enterprise Board is present, a simple majority vote of Members present shall be required to carry any motion, order, regulation, bylaw, or other action. All formal action of the Enterprise Board shall be by resolution adopted at a duly called meeting of the Enterprise Board and no individual Member shall exercise any individual administrative authority with respect to the Enterprise.
- F. Voting. Each Member of the Enterprise Board shall be entitled to one vote. The Enterprise Board may act only by resolution or motion at a duly called meeting. Voting shall be either by voice or roll call vote. A roll call vote shall be conducted upon the request of a Member of the Enterprise Board or at the discretion of the Chair. Any Member of the Enterprise Board shall be disqualified from voting on any issue with respect to which they have a private interest, unless such Member has disclosed such interest in compliance with Section 24-18-110, C.R.S.
- G. Conduct of Meetings. All meetings of the Enterprise Board shall be conducted under Robert's Rules of Order unless specifically provided otherwise by the Enterprise Board or these Bylaws. When action is to be taken at a meeting, a motion shall be made by one of the Members to undertake the action; another Member must second the motion. The Chair or other individual facilitating the meeting shall entertain discussion on the motion, and a vote shall be taken. The motion shall be adopted by a majority of those casting votes, unless a greater margin of votes is otherwise required by these Bylaws or State law. The Members may vote to govern their proceedings by additional procedures contained in Robert's Rules of Order if they so desire.
- H. Committees. The Enterprise Board may, by a motion or resolution adopted by a majority of the Members of the Enterprise Board, designate not less than two (2) of its Members to constitute one or more committees, each of which shall have and may exercise such authority as may be set forth in said motion or resolution. If any such delegation of authority of the Enterprise Board is made as herein provided, all references to the Enterprise Board contained in these Bylaws, the Articles of Organization, Section 43-4-1203, *et seq.*, C.R.S., or any other applicable law or regulation relating to the authority so delegated shall be deemed to refer to such committee.
- I. Advisory Groups. The Enterprise Board may establish ad hoc advisory groups for specific projects, as needed.

### **Article III. Open Meetings and Open Records**

A. Open Meetings. All meetings of the Enterprise Board shall be open to the public and shall be preceded by adequate public notice as required by law. Public notice of the Enterprise Board agenda shall be made prior to Enterprise Board meetings.

B. Open Records. The records of the Enterprise Board shall be public records and shall be open for public inspection, as provided by law for public records. Enterprise Board meetings shall be recorded by electronic recording device. Minutes shall be made of all Enterprise Board meetings and shall be approved by the Enterprise Board. After approval by the Enterprise Board, minutes shall be made a part of the Enterprise Board records.

### **Article IV. Officers and Staff**

A. General. The Chair and Vice-Chair shall be the officers of the Enterprise Board. The Enterprise Board shall appoint a Secretary who shall not be a Member of the Enterprise Board. The Chair and Vice-Chair shall be elected by the Enterprise Board at its meeting in January 2022 and shall serve two (2) year terms in office or until a successor is elected by a vote of the Members of the Enterprise Board. Thereafter, the Enterprise Board shall elect a Chair and Vice-Chair in January in even-numbered years. If the election of such officers is not held at such meeting, such election shall take place as soon thereafter as a meeting may be conveniently held.

B. General Duties. All officers of the Enterprise, as between themselves and the Enterprise, shall have the authority and shall perform such duties in the management of the Enterprise as may be provided in these Bylaws, the Articles of Organization, or as may be determined by resolution or action of the Enterprise Board not inconsistent with these Bylaws.

1. Chair. The Chair shall preside at all meetings of the Enterprise Board. The Chair shall be a Member of the Enterprise Board. The Chair shall serve as the principal spokesperson for the Enterprise Board, and shall aid the Enterprise Program Manager and/or Secretary in coordination of meetings and agendas, and perform all duties incident to the office.

2. Vice-Chair. The Vice-Chair shall, in the case of the absence or disability of the Chair, perform the duties of the Chair. The Vice-Chair shall be a Member of the Enterprise Board. The Vice-Chair shall also perform such other duties as may be prescribed by the Enterprise Board from time to time.

3. Secretary. The Secretary, a member of the Colorado Department of Transportation (“CDOT”) staff, shall keep the records of the Enterprise Board. The Secretary shall perform all of the other administrative duties usually pertaining to this office, including taking the minutes of Enterprise Board meetings, and coordinating all communications, announcements, etc. The Secretary shall work with the Chair to coordinate Enterprise Board meeting details, including securing a location, posting the agenda, board packets, and notification of meetings. The Secretary’s term of office shall be at the will of the Enterprise Board.
  4. Program Administrator. The Program Administrator is a senior member of the CDOT staff assigned to provide strategic management and support for the Enterprise Board. The Program Administrator shall serve as a point of contact for the Enterprise and the Enterprise Board. The Program Administrator may suggest policies, procedures, and agenda items for the Board’s consideration and shall see that all policies, directions and orders of the Board are carried out. The Program Administrator shall have such other authority, powers, or duties as may be prescribed by the Board.
  5. Other Officers. The Enterprise Board may appoint other officers as it deems necessary and appropriate.
- C. Delegation of Duties. Whenever an officer is absent for any reason, the Enterprise Board may delegate the powers and duties of an officer to any other officer or to any Member of the Enterprise Board.
  - D. No Contract Right. Service on the Enterprise Board shall not of itself create contract rights in the office.

**Article V. Fiscal Year and Budget**

- A. Fiscal Year. The fiscal year of the Enterprise shall be based on the State of Colorado fiscal year (July 1 - June 30).
- B. Budget. The Enterprise Board shall set and adopt annual estimates of revenues and other available funds for the operating fund and for the special revenue fund, respectively. These estimates shall be adopted not later than June of each year for the following fiscal year. If circumstances change, the Enterprise Board may, at a regular or special Board meeting, modify the estimates to ensure expenditures do not exceed

available funds or to allow for additional appropriate expenditures if additional funds are available.

## **Article VI. Amendments**

- A. General. The Enterprise Board may amend, supplement, or repeal these Bylaws or adopt new bylaws; all such changes shall affect and be binding upon the Enterprise Board. Any amendments, supplement, or repeal of these Bylaws, or adoption of new bylaws, shall require a majority vote of all Members.
- B. Notice. Specific notice of each meeting at which consideration of proposed amendment to, supplementation of, or repeal of these Bylaws or adoption of new bylaws shall be given in the same manner as notice of special meetings pursuant to Article III, Section C of these Bylaws.
- C. Vote Necessary. Any adoption of new bylaws, or amendment, supplement, or repeal of these Bylaws, shall require approval by a majority of the Enterprise Board at any regular meeting at which the amendment, supplement, repeal, or adoption is considered.

## **Article VII. Miscellaneous**

- A. Invalid Provision. The invalidity or unenforceability of any particular provision of these Bylaws shall not affect the other provisions herein, and these Bylaws shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- B. Governing Law. These Bylaws shall be governed by and construed in accordance with the constitution and laws of the State of Colorado and Section 43-4-1203, *et seq.*, C.R.S. for the Enterprise, as amended from time to time.
- C. Gender. Whenever required by context, the singular shall include the plural, the plural the singular, and one gender shall include the other.
- D. Contracts and Amendments. The Enterprise Board shall set budgets for its operations and shall have authority to approve and enter into contracts and amend existing contracts so long as the total projected expenditures for either the operating fund or the special revenue fund do not exceed the estimate of available funds approved for the fiscal year by the Board.

# CLEAN TRANSIT ENTERPRISE

## ARTICLES OF ORGANIZATION

### PREAMBLE

The General Assembly of the State of Colorado (the “State”) found and declared in C.R.S. § 43-4-1201 that:

(a) Retail deliveries are increasing and are expected to continue to increase in communities across the state;

(b) The motor vehicles used to make retail deliveries are some of the most polluting vehicles on the road, which has resulted in additional and increasing air and greenhouse gas pollution;

(c) The adverse environmental and health impacts of increased emissions from motor vehicles used to make retail deliveries can be mitigated and offset by supporting the widespread adoption of electric buses for transit fleets and reducing vehicle miles traveled by encouraging people to choose clean, efficient, public transit options instead of personal motor vehicle travel;

(d) Instead of reducing the impacts of retail deliveries by limiting retail delivery activity through regulation, it is more appropriate to continue to allow persons who receive retail deliveries to benefit from the convenience afforded by unfettered retail deliveries and instead impose a small fee on each retail delivery and use fee revenue to fund necessary mitigation activities;

(e) It is necessary, appropriate, and in the best interest of the state and all Coloradans to incentivize, support, and accelerate the electrification of public transit in rural and urban areas throughout the state because electrification:

(I) Reduces emissions of air pollutants, including hazardous air pollutants and greenhouse gases, that contribute to adverse environmental effects, including but not limited to climate change, and adverse human health effects in and between communities, including communities near high-use transit corridors and disproportionately impacted communities, and helps the state meet its statutory greenhouse gas pollution reduction targets and comply with air quality attainment standards; and

(II) By reducing fuel and maintenance costs associated with the use of motor vehicles, helps public transit providers operate more efficiently, use cost savings to provide more reliable and convenient transit service to more riders, and further reduce emissions by reducing personal motor vehicle use; and

(f) By reducing motor vehicle emissions, transit fleet electrification effectively remediates some of the impacts of retail deliveries by offsetting a portion of the increased motor vehicle emissions resulting from such deliveries.

The General Assembly thereupon created in C.R.S. § 43-4-1203(1)(a) a clean transit enterprise as a government-owned business in the Colorado Department of Transportation (the “Department”).

**Article I. Name**

The clean transit enterprise created in C.R.S. § 43-4-1203(1)(a) shall be known as the CLEAN TRANSIT ENTERPRISE (“Enterprise”).

**Article II. Authority**

The Colorado Legislature approved the creation of the Clean Transit Enterprise during its regularly scheduled session in 2021, and the Governor of the State of Colorado signed SB 21-260 into law on June 17, 2021. The Enterprise shall function pursuant to these Articles of Organization until such time as it may be abolished by a specific action under applicable Colorado state law.

**Article III. Purpose**

The business purpose of the Enterprise is to reduce and mitigate the adverse environmental and health impacts of air pollution and greenhouse gas emissions produced by motor vehicles used to make retail deliveries by supporting the replacement of existing gasoline and diesel transit vehicles with electric motor vehicles, including motor vehicles that originally were powered exclusively by internal combustion engines but have been converted into electric motor vehicles, providing the associated charging infrastructure for electric transit fleet motor vehicles, supporting facility modifications that allow for the safe operation and maintenance of electric transit motor vehicles, and funding planning studies that enable transit agencies to plan for transit vehicle electrification.

**Article IV. TABOR Exemption**

As provided in C.R.S. § 43-4-1203(4), the Enterprise constitutes an “enterprise” for purposes of section 20 article X of the state constitution so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total annual revenue in grants from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to C.R.S. § 43-4-1203(4), the Enterprise is not subject to section 20 of article X of the state constitution. By providing remediation services as authorized by C.R.S. § 43-4-1201 *et seq.*, the clean transit enterprise engages in an activity conducted in the pursuit of a benefit, gain, or livelihood and therefore operates as a business in accordance with the determination of the Colorado supreme court in *Colorado Union of Taxpayers Foundation v. City of Aspen*, 2018 CO 36. Consistent with the determination of the Colorado supreme court in *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995), that the power to impose taxes is inconsistent with enterprise status under section 20 of article X of the state constitution, the general assembly declared that the revenue collected by the Enterprise is generated by fees, not taxes, because the clean transit retail delivery fee imposed by the Enterprise as authorized by C.R.S. § 43-4-1203(7) is imposed for the specific purpose of allowing the enterprise to defray the costs of providing the remediation services specified by law, including mitigating impacts to air quality and greenhouse



gas emissions caused by the activities on which the fees are assessed, and contributes to the implementation of the comprehensive regulatory scheme required for the planning, funding, development, construction, maintenance, and supervision of a sustainable transportation system. The fees are collected at rates that are reasonably calculated based on the impacts caused by fee payers and the cost of remediating those impacts.

**Article V. Enterprise Board**

The Board of the Enterprise shall consist of nine (9) Members as described and defined in C.R.S. § 43-4-1203(2)(a).

The Enterprise Board shall exercise their powers and perform their duties as if the same were transferred to the Colorado Department of Transportation by a type 1 transfer, as defined in C.R.S. § 24-1-105.

**Article VI. Officers**

The officers of the Enterprise shall be elected according to the Bylaws of the Board and shall have the duties set forth in the Bylaws.

**Article VII. Powers**

The Enterprise may:

- (a) Impose a clean transit retail delivery fee as authorized in C.R.S. § 43-4-1203(7);
- (b) Issue grants, loans, and rebates as authorized in C.R.S. § 43-4-1203(8) ; and
- (c) Issue revenue bonds payable from the revenue and other available money of the Enterprise.

In addition to any other powers and duties specified in C.R.S. § 43-4-1203, the Board also has the following powers and duties:

- (a) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (b) To acquire, hold title to, and dispose of real and personal property;
- (c) To employ and supervise individuals, professional consultants, and contractors as are necessary in its judgement to carry out its business purpose;
- (d) To contract with any public or private entity, including state agencies, consultants, and the attorney general's office, for professional and technical assistance, office space and administrative services, advice, and other services related to the conduct of the affairs of the Enterprise;
- (e) To seek, accept, and expend gifts, grants, donations, or other payments from private or public sources, so long as the total amount of all grants from the state of Colorado and local governments received in any state fiscal year is less than ten (10) percent of the Enterprise's total annual revenue for the state fiscal year;

(f) To directly provide any service that it is authorized to provide indirectly through grants awarded;

(g) To promulgate rules for the sole purpose of setting the amount of the clean transit retail delivery fee at or below the maximum amounts authorized by law and to govern the process by which the Enterprise accepts applications for, awards, and oversees grants, loans, and rebates; and

(h) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers necessary and duties granted by law.

### **Article VIII. Revenues and Expenditures**

The clean transit enterprise fund has been created in the state treasury. The fund consists of clean transit retail delivery fee revenue credited to the fund pursuant to C.R.S. § 43-4-1203(7), any monetary gifts, grants, donations, or other money received by the Enterprise, any federal money that may be credited to the fund, and any other money that the general assembly may appropriate or transfer to the fund. The state treasurer shall credit to the fund all interest and income derived from the deposit and investment of money in the fund. Subject to annual appropriation by the general assembly, the Enterprise may expend money from the fund to provide grants, pay its reasonable and necessary operating expenses, including repayment of any loan received by the Enterprise pursuant to C.R.S. § 43-4-1203(5)(b), and otherwise exercise its powers and perform its duties as authorized by law. [Money in the fund is continuously appropriated to the Enterprise for the purposes set forth in C.R.S. § 43-4-1301 *et seq.* and to pay the Enterprise's reasonable and necessary operating expenses, including the repayment of any loan received pursuant to).]

The Transportation Commission may transfer money from the state highway fund to the Enterprise for the purpose of defraying expenses incurred by the Enterprise before it receives fee revenue or revenue bond proceeds. The Enterprise may accept and expend any money so transferred, and notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer is a loan from the Transportation Commission to the Enterprise that is required to be repaid and is not a grant for purposes of section 20(2)(d) of article X of the state constitution or as defined in C.R.S. § 24-77-102(7). All money transferred as a loan to the Enterprise shall be credited to the clean transit enterprise initial expenses fund in the state treasury, and loan liabilities that are recorded in the clean transit initial expenses fund but that are not required to be paid in the current fiscal year shall not be considered when calculating sufficient statutory fund balance for purposes of C.R.S. § 24-75-109. The state treasurer shall credit to the fund all interest and income derived from the deposit and investment of money in the clean transit enterprise initial expenses fund. The clean transit enterprise initial expenses fund is continuously appropriated to the Enterprise for the purpose of defraying expenses incurred by the Enterprise before it receives fee revenue or revenue bond proceeds. As the Enterprise receives sufficient revenue in excess of expenses, the

Enterprise shall reimburse the state highway fund for the principal amount of any loan made by the Transportation Commission plus interest at a rate set by the Commission.

**Article IX. Articles of Organization – Amendment**

The Board may amend, supplement, or repeal these Articles of Organization or adopt new Articles of Organization. All such changes shall affect and be binding upon the Enterprise, the Board and Members heretofore, as well as hereafter, authorized. Any amendment, supplement, or repeal of these Articles of Organization, or adoption of new Articles of Organization shall require a majority vote of the Members at any regular meeting of the Board.

**Article X. Bylaws**

The Board shall adopt a set of Bylaws to govern its internal operations and procedures.