

CHAPTER 102

TRANSPORTATION

SENATE BILL 19-076

BY SENATOR(S) Scott, Bridges, Cooke, Coram, Donovan, Gardner, Holbert, Lundeen, Marble, Pettersen, Priola, Rankin, Smallwood, Sonnenberg, Tate, Winter, Woodward;
also REPRESENTATIVE(S) Rich and Valdez D., Carver, Catlin, Exum, Gray, Herod, Soper, Will.

AN ACT**CONCERNING THE PROCUREMENT OF CONSULTING ENGINEER SERVICES FOR DEPARTMENT OF TRANSPORTATION CONSTRUCTION PROJECTS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) When the department of transportation contracts with a consulting engineer for construction management and construction engineering services for a construction project, it typically pays the consulting engineer by the hour instead of requiring the consulting engineer to submit a fixed bid for all services to be provided for the project.

(b) Both the department of transportation and the general contractor for a construction project have a strong interest in successfully completing the project as quickly and efficiently as possible because completing the project quickly and efficiently:

(I) Saves the department money that the department can use to complete other projects and provide a safer and more effective transportation system; and

(II) Allows the general contractor, who typically must submit a fixed bid for the completion of the project in accordance with specified performance requirements and deadlines, to avoid penalties for failing to complete the project in accordance with the requirements and deadlines, devote more resources to other projects, make more money, and provide more jobs for Colorado workers.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(c) When the department of transportation contracts with a consulting engineer for construction management and construction engineering services for a construction project and pays the consulting engineer by the hour, the consulting engineer has a financial incentive to work as many hours as possible. This incentive is at odds with the interest of the department and the general contractor in successfully completing the project as quickly and efficiently as possible because the general contractor's ability to successfully complete the project depends in part on the consulting engineer's ability to competently and efficiently provide construction management and construction engineering services and expeditiously obtain required approvals from the department for any project changes that the consulting engineer recommends.

(d) The efficiency and accountability committee of the department of transportation is charged with helping the transportation commission and the department execute their duties efficiently by periodically recommending means by which the commission and the department may execute their duties more efficiently.

(e) It is necessary and appropriate to require the efficiency and accountability committee to study the manner in which the department of transportation procures construction management and construction engineering services from consulting engineers, determine whether improvements can be made to better align consulting engineer incentives with the interests of the department and general contractors in successfully completing department projects as quickly and efficiently as possible, and recommend appropriate process improvements, including potential statutory changes, to the commission and the executive director of the department and to require the department to report on the recommendations made to its legislative oversight committees.

SECTION 2. In Colorado Revised Statutes, 2-3-1203, **repeal** (8)(a)(VI) as follows:

2-3-1203. Sunset review of advisory committees - legislative declaration - definition - repeal. (8) (a) The following statutory authorizations for the designated advisory committees will repeal on July 1, 2019:

~~(VI) The standing efficiency and accountability committee created in section 43-1-106, C.R.S.~~

SECTION 3. In Colorado Revised Statutes, 43-1-106, **repeal** (17)(d); and **add** (17)(b.5) as follows:

43-1-106. Transportation commission - powers and duties. (17) (b.5) (I) THE EFFICIENCY AND ACCOUNTABILITY COMMITTEE SHALL STUDY AND REPORT TO THE EXECUTIVE DIRECTOR AND THE COMMISSION ITS FINDINGS AND ANY RECOMMENDATIONS REGARDING THE FOLLOWING ISSUES RELATING TO CONSULTING ENGINEER CONTRACTS:

(A) IMPLEMENTATION OF FIXED BID PROCUREMENT IN LIEU OF BIDS BASED ON HOURLY CHARGES;

(B) THE QUALITY ASSURANCE PROCESS;

(C) THE REVOLVING DOOR OF RETIRED DEPARTMENT EMPLOYEES GOING TO WORK FOR CONSULTANTS;

(D) INCENTIVES FOR CLOSING OUT THE CONTRACTS, EARLY PROJECT COMPLETION, AND TIMELY PROBLEM RESOLUTION; AND

(E) PROJECT STAFFING AND IMPLEMENTATION OF THE PORTION OF THE DEPARTMENT MEMORANDUM "WORK PLAN FOR CONSISTENT CDOT AND CONSULTANT CONSTRUCTION PROJECT ADMINISTRATION" UNDER THE HEADING "MEASUREMENTS IN FISCAL YEAR 2015".

(II) THE DEPARTMENT SHALL ANNUALLY REPORT TO THE JOINT COMMITTEES OF REFERENCE OF THE HOUSE OF REPRESENTATIVES AND THE SENATE TO WHICH THE DEPARTMENT OF TRANSPORTATION IS ASSIGNED PURSUANT TO SECTION 2-7-203 (1) AS PART OF THE HEARING REQUIRED BY SECTION 2-7-203 (2)(a) REGARDING THE FINDINGS AND ANY RECOMMENDATIONS REPORTED AS REQUIRED BY SUBSECTION (17)(b.5)(I) OF THIS SECTION AND THE POSITION OF THE DEPARTMENT WITH RESPECT TO THE FINDINGS AND ANY RECOMMENDATIONS.

~~(d) This subsection (17) is repealed, effective July 1, 2019. Before its repeal, this subsection (17) is scheduled for review in accordance with section 2-3-1203, C.R.S.~~

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 12, 2019