

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 19-0149.01 Jason Gelender x4330

SENATE BILL 19-076

SENATE SPONSORSHIP

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HOUSE
3rd Reading Unamended
March 25, 2019

A BILL FOR AN ACT

101 **CONCERNING THE PROCUREMENT OF CONSULTING ENGINEER SERVICES**
102 **FOR DEPARTMENT OF TRANSPORTATION CONSTRUCTION**
103 **PROJECTS.**

HOUSE
Amended 2nd Reading
March 22, 2019

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

SENATE
3rd Reading Unamended
February 21, 2019

The bill requires the department of transportation (CDOT) to procure construction management and construction engineering services to be provided by a consulting engineer for a CDOT construction project through a fixed bid for all services to be provided by the consulting engineer for the project and prohibits CDOT from paying the consulting

SENATE
Amended 2nd Reading
February 20, 2019

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

engineer by the hour.

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

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

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

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

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

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

23 (c) When the department of transportation contracts with a
24 consulting engineer for construction management and construction
25 engineering services for a construction project and pays the consulting

1 engineer by the hour, the consulting engineer has a financial incentive to
2 work as many hours as possible. This incentive is at odds with the interest
3 of the department and the general contractor in successfully completing
4 the project as quickly and efficiently as possible because the general
5 contractor's ability to successfully complete the project depends in part on
6 the consulting engineer's ability to competently and efficiently provide
7 construction management and construction engineering services and
8 expeditiously obtain required approvals from the department for any
9 project changes that the consulting engineer recommends.

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

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

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

1 **2-3-1203. Sunset review of advisory committees - legislative**
2 **declaration - definition - repeal.** (8) (a) The following statutory
3 authorizations for the designated advisory committees will repeal on July
4 1, 2019:

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

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

9 **43-1-106. Transportation commission - powers and duties.**

10 (17) (b.5) (I) THE EFFICIENCY AND ACCOUNTABILITY COMMITTEE SHALL
11 STUDY AND REPORT TO THE EXECUTIVE DIRECTOR AND THE COMMISSION
12 ITS FINDINGS AND ANY RECOMMENDATIONS REGARDING THE FOLLOWING
13 ISSUES RELATING TO CONSULTING ENGINEER CONTRACTS:

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

16 (B) THE QUALITY ASSURANCE PROCESS;

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

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

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

25 (II) THE DEPARTMENT SHALL ANNUALLY REPORT TO THE JOINT
26 COMMITTEES OF REFERENCE OF THE HOUSE OF REPRESENTATIVES AND THE
27 SENATE TO WHICH THE DEPARTMENT OF TRANSPORTATION IS ASSIGNED

1 PURSUANT TO SECTION 2-7-203 (1) AS PART OF THE HEARING REQUIRED BY
2 SECTION 2-7-203 (2)(a) REGARDING THE FINDINGS AND ANY
3 RECOMMENDATIONS REPORTED AS REQUIRED BY SUBSECTION (17)(b.5)(I)
4 OF THIS SECTION AND THE POSITION OF THE DEPARTMENT WITH RESPECT
5 TO THE FINDINGS AND ANY RECOMMENDATIONS.

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

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