

Subpoena Power for Auditor's Office for Performance Audits

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Councilmembers Sawyer and Parady



DENVER
OFFICE OF CITY COUNCIL

Current Law

The lack of sufficient means to obtain records impedes the Auditor's Office from completing its statutorily required duties.

- Denver law requires the Auditor's Office (AO) to conduct financial and performance audits of the city and its contractors in accordance with Generally Accepted Government Auditing Standards.
- Denver law grants the AO access to all city and contractor records necessary to conduct and fulfill these duties — without limitation.
- Denver's Auditor is the only elected official without subpoena authority.



Problem to Solve

Audited parties — city agencies or contractors under audit — regularly refuse to produce necessary information.

No explicit recourse or remedy exists in Denver law that requires an audited party to provide the Auditor with requested records or sanctions an audited party for failing to comply with an information request from the Auditor's Office.

The Auditor, with the approval and cooperation of the City Attorney's Office, could sue a contractor for breach of contract to access records. However, taking city partners or agencies to court is not an efficient or effective use of public resources and still does not guarantee production of records.



Stakeholders

- ☐ City Council
- ☐ Denver Art Museum
- ☐ Denver Metro Chamber of Commerce
- ☐ Downtown Denver Partnership
- ☐ Colorado Bar & Restaurant Association
- ☐ Denver Botanic Gardens
- ☐ Caring for Denver
- ☐ Prosperity Fund Denver
- ☐ Hotel & Lodgers Association
- ☐ Women of Construction group – American Subcontractors Association
- ☐ Visit Denver
- ☐ Denver Preschool Program

- ☐ Colorado Cross-Disability Coalition
- ☐ Colorado Fiscal Institute
- ☐ Community Economic Defense Project

Labor

- ☐ Coloradans for the Common Good
- ☐ Denver Area Labor Federation
- ☐ Sheetmetal Workers Local 9
- ☐ UFCW Local 7
- ☐ CWA 777
- ☐ SEIU
- ☐ Colorado Building & Trades Council
- ☐ Southwest Mountain States Carpenters
- ☐ Jobs with Justice
- ☐ El Centro de los Trabajadores

Main bill elements

This bill is largely a mirror of the unanimously-passed Denver Labor subpoena power bill.

Grants subpoena authority expressly limited to the performance of one of the Auditor's statutory duties – performance audits.

Includes the right to appeal a subpoena to a neutral, third-party hearing officer. Officers:

- are required by law to remain unbiased and independent
- **can modify or quash a subpoena**, including adding additional protections for sensitive or confidential data
- must follow the standards of conduct set forth in the Colorado Code of Judicial Conduct

Main bill elements

Subpoena authority only applies to those who directly contract with the city, not their contractors.

Additional protections added from stakeholder feedback:

- The fine structure is more lenient and is aligned with article XII, chapter 2 of the Code
- The Auditor's Office is explicitly required to protect records not only in alignment with the city's cybersecurity and data protection awareness policy, it also requires adherence with National Institute of Standards and Technology (NIST) frameworks.

Existing Contract Audit Clause

EXAMINATION OF RECORDS AND AUDITS: Any authorized agent of the City, including the City Auditor or his or her representative, **has the right to access and the right to examine, copy and retain copies, at City's election in paper or electronic form,** any pertinent books, documents, papers and records related to Consultant's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Consultant shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.

Benefits

- It would create a process to obtain needed records without need to file suit.
- It would encourage cooperation and permit the Auditor and the subpoenaed party to mutually agree to a time and scope for producing the requested records.
- It would better ensure the transparency and accountability the Auditor is meant to provide Denver constituents.
- It is a no-cost, more incremental solution to prevent audit delays.
- Creates consistency by holding institutions that use public dollars to the same standards as the private sector.

FAQs

Could the Auditor subpoena subcontractors?	No, this authority applies only to the partners who have signed a contract with the city and already agreed in that contract to supply information for audit.
How is sensitive and protected information safeguarded?	Denver Auditor's audit workpaper system has been vetted by Technology Services and is HIPAA-compliant, among many other high standards. A hearing officer can issue a protective order or modify or quash the subpoena for additional protections.

FAQs

Can records unrelated to the city contract be subpoenaed?	No, records must be related to assessing performance on the contract at issue.
Will this impact businesses' interest in contracting with the city?	This tool will make it easier to do business with the city, not harder, in that it creates an avenue for conflict resolution where none existed before.

FAQs

Does this bill include city agencies?	The bill does not apply to audits of city agencies/entities (the City Attorney's Office requires this information to be shared with the Auditor's Office, so no subpoena power is needed)
Is subpoena power a common tool for audit agencies?	Yes, dozens of other audit agencies have subpoena authority including Atlanta, Chicago, DC, Detroit, Kansas City, Portland, San Diego, Santa Fe, Colorado Office of the State Auditor, and more.

Relevant Audits

On the 2024 Audit Plan

Paramedic Response Times –
Denver Fire Department

City Shelters – Department of
Housing Stability

Caring for Denver Foundation –
Department of Public Health
and Environment

Certifying Disadvantaged
Businesses – Denver Economic
Development & Opportunity

Recently Completed

Homeless Encampments

Affordable Housing

Co-Responder Grant and
Contract Compliance (Caring for
Denver)

Neighborhood Food
Environments Program Grant
Compliance

Transparency: Public Notice and
Engagement

Neighborhood Sidewalk Repair
Program

Stakeholder Support



"Our members rely on city services contracted by city agencies to function properly. There are times when companies that are contractors feel like they can fail to fully follow Colorado and federal anti-discrimination laws...

To assure equitable delivery of services the function of a government auditor is imperative. It is the definition of lack of equity to force the disability community member to have to individually raise each concern, often to a bureaucracy like the State Civil Rights Commission or the US Department of Justice that is not responsive."

Stakeholder Support



"We also support 24-0443 (subpoena power for performance audits) because CCG represents working families that have been victims of wage theft AND and even more families that rely on effective delivery of city services. Subpoena power for wage theft AND performance audits is necessary to ensure the City and County is following through on the commitments it makes to our collective membership and all Denverites."

Stakeholder Support



"In our work, we find that audits help ensure a level playing field – that contractors are not cutting corners to get ahead creating unfair competition. Under current law, entities can withhold information necessary for an audit, frustrating their efforts and causing an audit to end. Existing law does not properly protect taxpayers' investment in our city. We urge you to fix this loophole in the law."



Questions