

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

INTRODUCED

LLS NO. 23-0731.01 Jessica Herrera x4218

HOUSE BILL 23-1248

HOUSE SPONSORSHIP

Garcia and Mabrey,

SENATE SPONSORSHIP

(None),

House Committees
Legislative Council

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE**
102 **COUNCIL'S INVESTIGATORY AUTHORITY, AND, IN CONNECTION**
103 **THEREWITH, AUTHORIZING THE EXECUTIVE COMMITTEE OF THE**
104 **LEGISLATIVE COUNCIL TO CREATE AN AD HOC INVESTIGATORY**
105 **COMMITTEE AND ISSUE SUBPOENAS.**

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>.)

Current law authorizes the general assembly to prescribe the conditions and manner under which a witness may be summoned to

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

attend, to produce documents, or both, before a committee, or to either the house of representatives or senate. Joint rule 33 of the Colorado legislative joint rules of the senate and house outlines the current mechanism by which the general assembly exercises its investigatory authority and issues subpoenas.

The bill authorizes the executive committee of the legislative council (executive committee) to create ad hoc investigatory committees and grants the executive committee the power to subpoena a witness, to take testimony under oath, and to assemble records, documents, and other evidence by subpoena duces tecum. The bill also requires the executive committee, if it decides not to issue a subpoena under its own discretion, to issue a subpoena if 30% or more of the voting members of an ad hoc investigatory committee, created by the executive committee, vote to require the executive committee to do so.

The bill requires a subpoena issued by the executive committee to include:

- The name of the issuing body;
- The authority under which the subpoena is issued;
- The subject of the inquiry and a command to the person to whom it is issued to attend and give testimony at a time and place specified in the subpoena; or
- A command to the person to whom the subpoena is directed to produce books, records, documents, or other tangible evidence as the executive committee may require.

The bill requires service of process to be made by a sheriff, the sheriff's deputy, or any other person who is at least 18 years of age and not interested in the proceeding. Service must be made by delivering a copy of the subpoena to the person named in the subpoena not later than 48 hours before the time specified for appearance in the subpoena unless, for good cause shown, a majority of the executive committee authorizes service within the 48-hour period.

The bill allows any person subpoenaed by the executive committee to seek relief by providing the executive committee with a written statement indicating how such disclosure would be illegal or unduly oppressive or burdensome. The executive committee may consider any relief request but is not obligated to do so if it determines that the potential impact of the subpoena outweighs the burden imposed on the person subject to the subpoena. Any person who is issued a subpoena and is denied a request for relief by the executive committee may request that a district court in the county where the subpoena was served, the county of the residence of the witness or custodian served, or the city and county of Denver quash or limit the scope of the subpoena. The bill also permits any person who is subpoenaed by the executive committee to be represented by legal counsel.

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

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

4 (a) It is an appropriate use of plenary powers of the general
5 assembly to empower a body such as an ad hoc investigatory committee
6 created by the executive committee of the legislative council to
7 investigate tragic events, situations, or issues that have gaps in oversight
8 or no form of oversight currently in place. The following are a few
9 examples of recent events that the general assembly may investigate and
10 make recommendations for legislative or other action that could prevent
11 the occurrence of a similar tragedy:

12 (I) The Marshall fire that occurred on December 30, 2021 has
13 prompted an investigation that has found no explanation on the cause of
14 the fire and there appears to be no entity that has direct oversight of
15 potential actors;

16 (II) Suncor Energy Inc., has had repeated incidents at their plant
17 that have caused great harm to their workforce. These incidents have not
18 been investigated and the shutdown of Suncor Energy Inc., has had
19 tremendous impact on the airline sector and western slope communities;
20 and

21 (III) The response to floods in largely low-income, Latino
22 residential communities has not been addressed with urgency.

23 (b) Therefore, the general assembly further finds and declares that,
24 due to a lack of major investigations into recent tragic events and
25 inadequate efforts to rectify or prevent similar tragic incidents from
26 occurring in the future, that it is in best interests of the people of the state

1 of Colorado for the general assembly to use its plenary powers to
2 empower an ad hoc investigatory committee created by the executive
3 committee of the legislative council to investigate tragic events,
4 situations, or issues that have gaps in oversight or no form of oversight
5 currently in place.

6 **SECTION 2.** In Colorado Revised Statutes, **amend 2-2-313** as
7 follows:

8 **2-2-313. Witnesses - attendance before assembly.** (1) EXCEPT
9 AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, the general
10 assembly, or either house thereof, by resolution or otherwise, as it deems
11 best, may prescribe the conditions under which and the manner in which
12 a witness may be summoned to attend, with or without documents in ~~his~~
13 THE WITNESS'S possession or under ~~his~~ THE WITNESS'S control, before any
14 committee of said general assembly or of either house thereof.

15 (2) (a) THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL
16 DESCRIBED IN SECTION 2-3-301 (1), REFERRED TO IN THIS SUBSECTION (2)
17 AS THE "EXECUTIVE COMMITTEE", HAS THE AUTHORITY, BOTH WHEN THE
18 GENERAL ASSEMBLY IS IN SESSION AND WHEN THE GENERAL ASSEMBLY IS
19 NOT IN SESSION AND BY A MAJORITY VOTE OF ITS MEMBERS, TO CREATE AD
20 HOC INVESTIGATORY COMMITTEES.

21 (b) THE PURPOSE OF ANY AD HOC INVESTIGATORY COMMITTEE
22 CREATED PURSUANT TO THIS SUBSECTION (2) IS TO MAKE FACTUAL
23 FINDINGS ON ISSUES OF URGENT, PRESSING, OR UNMET NEED ASSIGNED BY
24 THE EXECUTIVE COMMITTEE TO THE AD HOC INVESTIGATORY COMMITTEE
25 THAT HAVE AN IMPACT ON THE COMMUNITY, ECONOMY, OR SOCIETY.

26 (c) THE CHAIR OF THE EXECUTIVE COMMITTEE SHALL APPOINT A
27 MINIMUM OF THREE MEMBERS OF THE GENERAL ASSEMBLY TO SERVE ON

1 ANY AD HOC INVESTIGATORY COMMITTEE CREATED PURSUANT TO THIS
2 SUBSECTION (2) AND MAY APPOINT ADDITIONAL NONVOTING MEMBERS
3 WHO ARE NOT MEMBERS OF THE GENERAL ASSEMBLY BASED ON THEIR
4 EXPERTISE.

5 (d) THE EXECUTIVE COMMITTEE HAS THE POWER, ON BEHALF OF
6 ANY AD HOC INVESTIGATORY COMMITTEE CREATED PURSUANT TO THIS
7 SUBSECTION (2), TO SUBPOENA WITNESSES, TO TAKE TESTIMONY UNDER
8 OATH, AND TO ASSEMBLE RECORDS, DOCUMENTS, AND OTHER EVIDENCE
9 BY SUBPOENA DUCES TECUM. IF THE EXECUTIVE COMMITTEE UNDER ITS
10 OWN DISCRETION DECIDES NOT TO ISSUE A SUBPOENA, THE EXECUTIVE
11 COMMITTEE SHALL BE REQUIRED TO ISSUE A SUBPOENA, FOR WITNESS
12 TESTIMONY OR TO ASSEMBLE RECORDS, DOCUMENTS, AND OTHER
13 EVIDENCE BY SUBPOENA DUCES TECUM, IF THIRTY PERCENT OR MORE OF
14 THE VOTING MEMBERS OF THE AD HOC INVESTIGATORY COMMITTEE VOTE
15 TO REQUEST THAT THE EXECUTIVE COMMITTEE ISSUE A SUBPOENA.

16 (e) ANY ADHOC INVESTIGATORY COMMITTEE CREATED PURSUANT
17 TO THIS SUBSECTION (2) HAS THE AUTHORITY TO REFER ITS FINDINGS TO
18 THE OFFICE OF THE ATTORNEY GENERAL OR ANY OTHER OVERSIGHT BODY
19 AND SHALL ISSUE A PUBLIC FINAL REPORT UPON REACHING ITS FACTUAL
20 FINDINGS.

21 (f) WHENEVER THE EXECUTIVE COMMITTEE ISSUES A SUBPOENA
22 PURSUANT TO THIS SUBSECTION (2), THE SUBPOENA MUST:

23 (I) INCLUDE:

24 (A) THE NAME OF THE ISSUING BODY; AND

25 (B) THE AUTHORITY UNDER WHICH THE SUBPOENA IS ISSUED; AND

26 (II) (A) INCLUDE THE SUBJECT OF THE INQUIRY AND COMMAND
27 THE PERSON TO WHOM IT IS ISSUED TO ATTEND AND GIVE TESTIMONY AT

1 A TIME AND PLACE SPECIFIED IN THE SUBPOENA; OR

2 (B) COMMAND THE PERSON TO WHOM IT IS DIRECTED TO PRODUCE
3 BOOKS, RECORDS, DOCUMENTS, OR OTHER TANGIBLE EVIDENCE AS THE
4 EXECUTIVE COMMITTEE MAY REQUIRE.

5 (g) SERVICE OF A SUBPOENA THAT THE EXECUTIVE COMMITTEE
6 ISSUES PURSUANT TO THIS SUBSECTION (2) MAY BE MADE BY A SHERIFF,
7 THE SHERIFF'S DEPUTY, OR ANY OTHER PERSON WHO IS AT LEAST EIGHTEEN
8 YEARS OF AGE AND NOT INTERESTED IN THE PROCEEDING. SERVICE MUST
9 BE MADE BY DELIVERING A COPY OF THE SUBPOENA TO THE PERSON
10 NAMED NOT LATER THAN FORTY-EIGHT HOURS BEFORE THE TIME SPECIFIED
11 FOR APPEARANCE IN THE SUBPOENA UNLESS, FOR GOOD CAUSE KNOWN, A
12 MAJORITY OF THE EXECUTIVE COMMITTEE AUTHORIZES SERVICE WITHIN
13 THE FORTY-EIGHT-HOUR PERIOD. THE AMOUNT OF FEES FOR ATTENDANCE
14 AND MILEAGE MUST BE THE SAME AS THAT ALLOWED BY LAW FOR
15 WITNESSES IN CIVIL CASES AND MUST BE PAID AFTER THE WITNESS IS
16 DISCHARGED FROM FURTHER ATTENDANCE.

17 (h) IF ANY PERSON WHO IS ISSUED A SUBPOENA PURSUANT TO THIS
18 SUBSECTION (2) BELIEVES THAT THE MATERIAL OR TESTIMONY
19 SUBPOENAED IS A TRADE SECRET AS DEFINED IN SECTION 18-4-408 (2),
20 IRRELEVANT, PRIVILEGED, OR THAT DISCLOSURE OF THE MATERIAL OR
21 TESTIMONY IS ILLEGAL OR UNDULY OPPRESSIVE OR BURDENSOME, RELIEF
22 FROM THE SUBPOENA MUST BE REQUESTED IN WRITING FROM THE
23 EXECUTIVE COMMITTEE AND ACCOMPANIED BY A STATEMENT OF THE
24 REASON FOR SUCH RELIEF. THE EXECUTIVE COMMITTEE HAS THE
25 DISCRETION TO CONSIDER ANY REQUEST FOR RELIEF BUT IS NOT
26 OBLIGATED TO PROVIDE RELIEF IF IT DETERMINES THAT ANY BURDEN ON
27 ANY PERSON SUBJECT TO THE SUBPOENA IS OUTWEIGHED BY THE

1 POTENTIAL IMPACT THE SUBPOENA MAY HAVE. ANY PERSON WHO IS
2 ISSUED A SUBPOENA AND IS DENIED A REQUEST FOR RELIEF BY THE
3 EXECUTIVE COMMITTEE MAY REQUEST THAT A DISTRICT COURT IN THE
4 COUNTY WHERE THE SUBPOENA WAS SERVED, THE COUNTY OF THE
5 RESIDENCE OF THE WITNESS OR CUSTODIAN SERVED, OR THE CITY AND
6 COUNTY OF DENVER QUASH OR LIMIT THE SCOPE OF THE SUBPOENA.

7 (i) ANY WITNESS SUBPOENAED TO GIVE TESTIMONY OR PRODUCE
8 EVIDENCE MAY HAVE LEGAL COUNSEL PRESENT.

9 (j) THE LEGISLATIVE COUNCIL STAFF AND THE OFFICE OF
10 LEGISLATIVE LEGAL SERVICES SHALL BE AVAILABLE TO ASSIST ANY AD
11 HOC INVESTIGATORY COMMITTEES CREATED PURSUANT TO THIS
12 SUBSECTION (2) IN CARRYING OUT ITS DUTIES.

13 (k) THE LEGISLATIVE MEMBERS OF AN AD HOC INVESTIGATORY
14 COMMITTEE CREATED PURSUANT TO THIS SUBSECTION (2) ARE ENTITLED
15 TO RECEIVE COMPENSATION AND REIMBURSEMENT OF EXPENSES
16 PURSUANT TO SECTION 2-2-326.

17 (l) ANY MEMBER OF AN AD HOC INVESTIGATORY COMMITTEE
18 CREATED PURSUANT TO THIS SUBSECTION (2) WHO IS NOT A MEMBER OF
19 THE GENERAL ASSEMBLY MAY, AT THE DISCRETION OF THE EXECUTIVE
20 COMMITTEE, BE REIMBURSED FOR REASONABLE AND NECESSARY EXPENSES
21 INCURRED WHILE SERVING ON THE AD HOC INVESTIGATORY COMMITTEE.

22 **SECTION 3. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, or safety.