

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0803.01 Kate Meyer x4348

HOUSE BILL 13-1285

HOUSE SPONSORSHIP

Williams and Salazar,

SENATE SPONSORSHIP

Giron and Ulibarri,

House Committees

Business, Labor, Economic, & Workforce Development

Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE COMMISSION OF A STUDY TO DETERMINE WHETHER**
102 **DISPARITIES INVOLVING CERTAIN HISTORICALLY**
103 **UNDERUTILIZED BUSINESSES EXIST WITHIN THE STATE**
104 **PROCUREMENT PROCESS, AND, IN CONNECTION THEREWITH,**
105 **REQUIRING THE REPORT SETTING FORTH THE FINDINGS OF SUCH**
106 **STUDY TO INCLUDE RECOMMENDATIONS TO IMPROVE EQUITY IN**
107 **THE STATE PROCUREMENT PROCESS IF DISPARITIES ARE FOUND**
108 **AND MAKING AN APPROPRIATION.**

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

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

applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills/summaries>.)

In order to ascertain whether disparities exist between the participation of historically underutilized businesses (i.e., businesses owned by racial or ethnic minorities, women, veterans, or persons with disabilities) and other businesses in the state procurement system, the bill directs the department of personnel to contract for a disparity study of the Colorado procurement process and to make recommendations to ameliorate any discrepancies identified by the study. The final report must be provided to the legislative audit committee, the house business, labor, economic, and workforce development committee, and the senate business, labor, and technology committee no later than February 1, 2015.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 9 to article
3 103 of title 24 as follows:

4 **PART 9**

5 **PROCUREMENT DISPARITIES STUDY**

6 **24-103-901. Legislative declaration.** (1) THE GENERAL
7 ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

8 (a) IT IS IMPERATIVE AND THE PUBLIC POLICY OF COLORADO THAT
9 THE STATE PROCUREMENT PROCESS BE FREE FROM BIAS SO THAT ALL
10 QUALIFIED PERSONS AND ENTITIES MAY COMPETE FOR STATE BUSINESS;

11 (b) A FAIR PROCUREMENT PROCESS NOT ONLY ENSURES JUSTICE
12 AND FAIRNESS IN STATE CONTRACTING BUT WILL BROADEN THE
13 PROCUREMENT CONTRACTOR POOL, WHICH WILL RESULT IN EFFICIENCIES
14 STATEWIDE AND, AS WARRANTED, PROMOTE THE GROWTH OF
15 HISTORICALLY UNDERUTILIZED BUSINESSES, THEREBY CREATING JOBS AND
16 STIMULATING THE STATE'S ECONOMY;

17 (c) ALTHOUGH STUDIES ESTABLISHING DISCRIMINATION IN
18 PROCUREMENT FOR CERTAIN INDUSTRIES OR IN CERTAIN LOCALITIES HAVE

1 BEEN CONDUCTED, A COMPREHENSIVE ANALYSIS OF STATE PROCUREMENTS
2 AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES HAS NOT YET
3 BEEN COMMISSIONED;

4 (d) THE UNITED STATES SUPREME COURT HAS RECOGNIZED THAT
5 DISPARITY STUDIES ARE TOOLS THAT SEEK TO QUALIFY AND QUANTIFY
6 PAST DISCRIMINATION AND RECOMMEND CERTAIN CORRECTIVE MEASURES
7 AS MAY BE WARRANTED BY THE STUDY'S FINDINGS, AND, PURSUANT TO
8 *CITY OF RICHMOND V. J. A. CROSON CO.*, 488 U.S. 469 (1989), THE COURT
9 ESTABLISHED A REQUIREMENT THAT ANY SUCH DISPARITY STUDY BE
10 CONDUCTED BY AN INDEPENDENT ENTITY;

11 (e) IF ANY DISPARITIES EXIST, SUCH A STUDY IS ESSENTIAL TO THE
12 ULTIMATE ACHIEVEMENT OF A MARKETPLACE IN WHICH HISTORICALLY
13 UNDERUTILIZED BUSINESSES ARE NOT SUBJECT TO DISCRIMINATION AND
14 CAN OBTAIN A FAIR MARKET SHARE OF CONTRACT EXPENDITURES; AND

15 (f) THEREFORE, IT IS THE INTENT OF THE GENERAL ASSEMBLY,
16 CONSISTENT WITH THE CODE'S STATED POLICIES OF ENSURING THE FAIR
17 AND EQUITABLE TREATMENT OF PERSONS WHO DEAL WITH THE
18 PROCUREMENT SYSTEM AND FOSTERING EFFECTIVE BROAD-BASED
19 COMPETITION WITHIN THE FREE ENTERPRISE SYSTEM, THAT AN
20 INDEPENDENT STUDY BE COMMISSIONED TO:

21 (I) DETERMINE THE FREQUENCY WITH WHICH STATE CONTRACTS
22 ARE AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES AND THE
23 MONETARY AMOUNTS OF SUCH AWARDS, COMPARED TO THE FREQUENCY
24 AND SIZE OF CONTRACTS AWARDED TO OTHER BUSINESSES; AND

25 (II) TO THE EXTENT THAT THE STUDY ESTABLISHES THAT
26 DISPARITIES ATTRIBUTABLE TO PAST OR PRESENT DISCRIMINATION EXIST
27 OR INHERE IN THE STATE PROCUREMENT PROCESS, TO RECOMMEND

1 REMEDIAL MEASURES TO ADDRESS THE EFFECTS OF THAT DISCRIMINATION.

2 (2) THE GENERAL ASSEMBLY FURTHER DECLARES THAT IT
3 INTENDS, BY LIMITING THE SCOPE OF THE STUDY TO THOSE STATE ENTITIES
4 WITH SUBSTANTIAL PROCUREMENT ACTIVITY, TO REDUCE THE COSTS OF
5 CONDUCTING THE DISPARITY STUDY WHILE STILL GENERATING ENOUGH
6 VALID QUALITATIVE AND QUANTITATIVE DATA FROM WHICH TO
7 EXTRAPOLATE TRENDS AND MAKE FINDINGS.

8 **24-103-902. Definitions.** AS USED IN THIS PART 9, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "CONTRACT" HAS THE MEANING SET FORTH IN SECTION
11 24-101-301 AND INCLUDES PUBLIC-PRIVATE PARTNERSHIPS AND OTHER
12 AGREEMENTS FOR PUBLIC-PRIVATE FINANCING.

13 (2) "CONTRACTOR" MEANS ANY PERSON WHO IS A PARTY TO A
14 CONTRACT.

15 (3) "HISTORICALLY UNDERUTILIZED BUSINESS" MEANS A BUSINESS:

16 (a) THAT IS AT LEAST FIFTY-ONE PERCENT OWNED BY ONE OR MORE
17 INDIVIDUALS WHO ARE:

18 (I) UNITED STATES CITIZENS OR PERMANENT RESIDENT ALIENS;
19 AND

20 (II) ONE OR MORE OF THE FOLLOWING:

21 (A) MEMBERS OF A RACIAL OR ETHNIC MINORITY GROUP;

22 (B) NON-HISPANIC CAUCASIAN WOMEN;

23 (C) VETERANS OF THE UNITED STATES ARMED FORCES; OR

24 (D) PERSONS WITH PHYSICAL OR MENTAL DISABILITIES; AND

25 (b) FOR WHICH THE MINORITY OWNERSHIP CONTROLS BOTH THE
26 MANAGEMENT AND DAY-TO-DAY BUSINESS DECISIONS.

27 (4) "PERSONS WITH PHYSICAL OR MENTAL DISABILITIES" MEANS

1 PERSONS WHO:

2 (a) HAVE IMPAIRMENTS THAT SUBSTANTIALLY LIMIT ONE OR MORE
3 MAJOR LIFE ACTIVITIES;

4 (b) ARE REGARDED GENERALLY BY THE COMMUNITY AS HAVING
5 A DISABILITY; AND

6 (c) WHOSE DISABILITIES SUBSTANTIALLY LIMIT THEIR ABILITIES TO
7 ENGAGE IN COMPETITIVE BUSINESS.

8 (5) "RACIAL OR ETHNIC MINORITY GROUP" MEANS:

9 (a) AFRICAN AMERICAN PERSONS, MEANING INDIVIDUALS HAVING
10 ORIGINS IN ANY OF THE BLACK RACIAL GROUPS OF AFRICA;

11 (b) HISPANIC AMERICAN PERSONS, INCLUDING PERSONS OF
12 MEXICAN, PUERTO RICAN, CUBAN, CENTRAL OR SOUTH AMERICAN, OR
13 OTHER SPANISH OR PORTUGUESE CULTURE OR ORIGIN, REGARDLESS OF
14 RACE;

15 (c) ASIAN AMERICAN PERSONS, INCLUDING PERSONS WHOSE
16 ORIGINS ARE FROM JAPAN, CHINA, TAIWAN, KOREA, VIETNAM, LAOS,
17 CAMBODIA, THE PHILIPPINES, SAMOA, THE UNITED STATES TERRITORIES
18 OF THE PACIFIC, OR THE NORTHERN MARIANA ISLANDS; OR PERSONS
19 WHOSE ORIGINS ARE FROM SUBCONTINENT ASIA, INCLUDING PERSONS
20 WHOSE ORIGINS ARE FROM INDIA, PAKISTAN, BANGLADESH, SRI LANKA,
21 BHUTAN, OR NEPAL; OR

22 (d) NATIVE AMERICAN PERSONS, INCLUDING PERSONS WHO ARE
23 AMERICAN INDIANS, ESKIMOS, ALEUTS, OR HAWAIIANS OF POLYNESIAN
24 DESCENT.

25 (6) "SUBCONTRACTOR" MEANS ANY PERSON WHO IS A PARTY TO A
26 CONTRACT WITH A CONTRACTOR.

27 **24-103-903. Disparity study - report.** (1) (a) THE EXECUTIVE

1 DIRECTOR SHALL COMMISSION A STATE DISPARITY STUDY REGARDING THE
2 PARTICIPATION OF HISTORICALLY UNDERUTILIZED BUSINESSES IN STATE
3 CONTRACTS ENTERED INTO FOR THE FOLLOWING ENTITIES DURING THE
4 2009-10, 2010-11, 2011-12, AND 2012-13 STATE FISCAL YEARS:

5 (I) THE DEPARTMENT OF PERSONNEL CREATED IN SECTION
6 24-1-128;

7 (II) THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
8 CREATED IN SECTION 24-1-119.5;

9 (III) THE DEPARTMENT OF LABOR AND EMPLOYMENT CREATED IN
10 SECTION 24-1-121;

11 (IV) THE DEPARTMENT OF HUMAN SERVICES CREATED IN SECTION
12 24-1-120;

13 (V) THE DEPARTMENT OF THE TREASURY CREATED IN SECTION
14 24-1-112;

15 (VI) THE DEPARTMENT OF EDUCATION CREATED IN SECTION
16 24-1-115;

17 (VII) THE DEPARTMENT OF CORRECTIONS CREATED IN SECTION
18 24-1-128.5; AND

19 (VIII) INSTITUTIONS OF HIGHER EDUCATION AND THE COLORADO
20 COMMISSION ON HIGHER EDUCATION; EXCEPT FOR THOSE ENTITIES THAT
21 HAVE ELECTED TO BE EXEMPT FROM THE CODE PURSUANT TO SECTION
22 24-101-105 (1) (b).

23 (b) (I) THE STUDY MUST BE CONDUCTED, AND A FINAL REPORT
24 PREPARED, BY AN ENTITY INDEPENDENT OF THE DEPARTMENT THAT IS
25 SELECTED IN RESPONSE TO A REQUEST FOR PROPOSAL ISSUED IN
26 ACCORDANCE WITH THIS CODE.

27 (II) THE ENTITIES SUBJECT TO THE STUDY PURSUANT TO

1 PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL COOPERATE FULLY WITH
2 THE INDEPENDENT CONTRACTOR ENGAGED TO CONDUCT THE STUDY.

3 (c) THE STUDY AND FINAL REPORT SETTING FORTH THE STUDY'S
4 METHODOLOGIES, FINDINGS, AND RECOMMENDATIONS MUST BE PROVIDED
5 BY FEBRUARY 1, 2015, TO:

6 (I) THE LEGISLATIVE AUDIT COMMITTEE CREATED IN SECTION
7 2-3-101, C.R.S.; AND

8 (II) THE HOUSE BUSINESS, LABOR, ECONOMIC, AND WORKFORCE
9 DEVELOPMENT COMMITTEE AND THE SENATE BUSINESS, LABOR, AND
10 TECHNOLOGY COMMITTEE, OR ANY SUCCESSOR COMMITTEES.

11 (2) (a) THE PURPOSES OF THE DISPARITY STUDY UNDERTAKEN
12 PURSUANT TO THIS SECTION ARE:

13 (I) TO DETERMINE WHETHER THERE IS A DISPARITY BETWEEN THE
14 NUMBER OF QUALIFIED HISTORICALLY UNDERUTILIZED BUSINESSES THAT
15 ARE READY, WILLING, AND ABLE TO PERFORM STATE CONTRACTS FOR
16 GOODS AND SERVICES, AND THE NUMBER OF SUCH CONTRACTORS
17 ACTUALLY ENGAGED TO PERFORM SUCH CONTRACTS, WHICH INFORMATION
18 MUST BE ASCERTAINED BY EVALUATING THE PRIME CONTRACTS AND
19 SUBCONTRACTS AWARDED IN THE FOLLOWING INDUSTRIES:

20 (A) CONSTRUCTION, INCLUDING NEW CONSTRUCTION,
21 REMODELING, RENOVATION, MAINTENANCE, DEMOLITION AND REPAIR OF
22 ANY PUBLIC STRUCTURE OR BUILDING, PIPELINE CONSTRUCTION, AND
23 OTHER PUBLIC IMPROVEMENTS;

24 (B) ARCHITECTURE AND ENGINEERING, INCLUDING CONSTRUCTION
25 MANAGEMENT, LANDSCAPE ARCHITECTURE, PLANNING, SURVEYING,
26 MAPPING SERVICES, AND DESIGN, BUILD, AND CONSTRUCTION SERVICES;

27 (C) PROFESSIONAL SERVICES, INCLUDING LEGAL SERVICES,

1 ACCOUNTING, INFORMATION TECHNOLOGY SERVICES, MEDICAL SERVICES,
2 TECHNICAL SERVICES, RESEARCH PLANNING, AND CONSULTING SERVICES;

3 (D) BROKERAGE AND INVESTMENT, INCLUDING BANKING, ASSET
4 MANAGEMENT, STATE RETIREMENT, AND PENSION SERVICES;

5 (E) GOODS AND SERVICES THAT MAY BE PROVIDED OR PERFORMED
6 WITHOUT PROFESSIONAL LICENSURE OR SPECIAL EDUCATION OR TRAINING,
7 INCLUDING GOODS AND SERVICES RELATING TO MATERIALS, SUPPLIES,
8 EQUIPMENT, MAINTENANCE, AND FOOD.

9 (II) TO DETERMINE WHAT CHANGES, IF ANY, SHOULD BE MADE TO
10 STATE POLICIES AFFECTING HISTORICALLY UNDERUTILIZED BUSINESSES.

11 (b) THE DISPARITY STUDY MUST SPECIFICALLY INCLUDE THE
12 FOLLOWING ANALYSES, BOTH FOR THE HISTORICALLY UNDERUTILIZED
13 BUSINESSES AS A GROUP AND FOR EACH SUBGROUP, AS SET FORTH IN
14 SECTION 24-103-902 (3) (a) (II):

15 (I) A PRIME CONTRACTOR UTILIZATION ANALYSIS THAT PRESENTS
16 THE DISTRIBUTION OF PRIME CONTRACTS BY INDUSTRY;

17 (II) A SUBCONTRACTOR UTILIZATION ANALYSIS THAT PRESENTS
18 THE DISTRIBUTION OF SUBCONTRACTS BY INDUSTRY;

19 (III) A MARKET AREA ANALYSIS THAT PRESENTS THE LEGAL BASIS
20 FOR THE GEOGRAPHICAL MARKET AREA DETERMINATION AND DEFINES THE
21 STATE'S MARKET AREA;

22 (IV) A PRIME CONTRACTOR AND SUBCONTRACTOR AVAILABILITY
23 ANALYSIS THAT PRESENTS THE DISTRIBUTION OF AVAILABLE BUSINESSES
24 IN THE STATE'S MARKET AREA;

25 (V) A PRIME CONTRACTOR DISPARITY ANALYSIS THAT PRESENTS
26 PRIME CONTRACTOR UTILIZATION COMPARED TO PRIME CONTRACTOR
27 AVAILABILITY BY INDUSTRY AND DETERMINES WHETHER THE COMPARISON

1 IS STATISTICALLY SIGNIFICANT;

2 (VI) A SUBCONTRACTOR DISPARITY ANALYSIS THAT PRESENTS
3 SUBCONTRACTOR UTILIZATION COMPARED TO SUBCONTRACTOR
4 AVAILABILITY BY INDUSTRY AND DETERMINES WHETHER THE COMPARISON
5 IS STATISTICALLY SIGNIFICANT;

6 (VII) A QUALITATIVE ANALYSIS THAT PRESENTS THE BUSINESS
7 COMMUNITY'S EXPERIENCES AND PERCEPTIONS OF BARRIERS
8 ENCOUNTERED IN CONTRACTING OR ATTEMPTING TO CONTRACT WITH THE
9 STATE; AND

10 (VIII) RECOMMENDATIONS REGARDING BEST MANAGEMENT
11 PRACTICES AND WAYS TO ENHANCE COLORADO'S CONTRACTING AND
12 PROCUREMENT ACTIVITIES WITH HISTORICALLY UNDERUTILIZED
13 BUSINESSES.

14 (c) (I) ANY CONCLUSION THAT DISCRIMINATION-RELATED
15 DISPARITY EXISTS BETWEEN THE AVAILABILITY AND UTILIZATION OF
16 HISTORICALLY UNDERUTILIZED BUSINESSES MUST BE SUPPORTED BY
17 STATISTICAL EVIDENCE AND MAY BE SUPPLEMENTED OR SUPPORTED BY
18 ANECDOTAL EVIDENCE.

19 (II) IF THE ANALYSIS SUPPORTS A FINDING THAT SUCH DISPARITY
20 EXISTS, THE REPORT MUST INCLUDE RECOMMENDATIONS TO AMELIORATE
21 THE DISPARITY, INCLUDING ANY STATUTORY CHANGES LIKELY TO CURE,
22 MITIGATE, OR REDRESS SUCH DISPARITY. ANY PROPOSED REMEDIAL
23 MEASURES MUST BE TAILORED TO ADDRESS DOCUMENTED STATISTICAL
24 DISPARITIES IN PROCUREMENT POLICIES.

25 (3) THE EXECUTIVE DIRECTOR SHALL TRANSMIT A COPY OF THE
26 DISPARITY STUDY FINAL REPORT PRODUCED PURSUANT TO THIS SECTION
27 TO THE DIRECTOR OF THE MINORITY BUSINESS OFFICE CREATED IN SECTION

1 24-49.5-102, WHO SHALL POST THE REPORT ON THAT OFFICE'S OFFICIAL
2 WEB SITE.

3 **SECTION 2. Appropriation.** In addition to any other
4 appropriation, there is hereby appropriated, out of any moneys in the
5 supplier database cash fund created in section 24-102-202.5 (2) (a),
6 Colorado Revised Statutes, not otherwise appropriated, to the department
7 of personnel, for the fiscal year beginning July 1, 2013, the sum of
8 \$1,009,000, or so much thereof as may be necessary, to be allocated to the
9 supplier database subdivision for the implementation of this act as
10 follows:

- 11 (a) \$1,000,000 for a procurement study; and
- 12 (b) \$9,000 for information technology services.

13 **SECTION 3. Effective date.** This act takes effect July 1, 2013.

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