

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 17, 2016
Date

Committee on Business Affairs and Labor.

After consideration on the merits, the Committee recommends the following:

HB16-1001 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend printed bill, strike everything below the enacting clause and
2 substitute:
- 3 "SECTION 1. In Colorado Revised Statutes, **add** 24-103-405 as
4 follows:
- 5 **24-103-405. Business compliance with equal pay standards.**
- 6 (1) A GOVERNMENTAL BODY SHALL NOT AWARD A CONTRACT TO A
7 BUSINESS PURSUANT TO THIS CODE UNLESS THE BUSINESS IS IN
8 COMPLIANCE WITH THE EQUAL PAY STANDARDS SPECIFIED IN SUBSECTION
9 (2) OF THIS SECTION; EXCEPT THAT THIS SECTION SHALL NOT APPLY TO
10 BUSINESSES WITH FIFTY OF FEWER EMPLOYEES.
- 11 (2) A BUSINESS THAT BIDS TO BE AWARDED A STATE CONTRACT
12 PURSUANT TO THIS CODE SHALL COMPLY WITH THE FOLLOWING
13 REQUIREMENTS:
- 14 (a) THE BUSINESS DOES NOT PAY ANY OF ITS EMPLOYEES AT WAGE
15 RATES LESS THAN THE RATES PAID TO OTHER EMPLOYEES ON THE BASIS OF
16 DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION,
17 TRANSGENDER STATUS, RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY
18 FOR SUBSTANTIALLY SIMILAR WORK, WHEN VIEWED AS A COMPOSITE OF
19 SKILL, EFFORT, AND RESPONSIBILITY AND PERFORMED UNDER SIMILAR
20 WORKING CONDITIONS, EXCEPT WHERE THE WAGE DIFFERENTIAL IS BASED
21 UPON ONE OR MORE OF THE FOLLOWING FACTORS:
- 22 (I) A SENIORITY SYSTEM;
- 23 (II) A MERIT SYSTEM;

1 (III) A SYSTEM THAT MEASURES AN EMPLOYEE'S EARNINGS BY THE
2 QUANTITY OR QUALITY OF PRODUCTION BY THE EMPLOYEE; OR
3 (IV) A BONA FIDE FACTOR OTHER THAN DISABILITY, RACE, CREED,
4 COLOR, SEX, SEXUAL ORIENTATION, TRANSGENDER STATUS, RELIGION,
5 AGE, NATIONAL ORIGIN, OR ANCESTRY, SUCH AS EDUCATION, TRAINING, OR
6 EXPERIENCE;
7 (b) EMPLOYEES OF THE BUSINESS CANNOT BE DISCIPLINED FOR
8 SHARING INFORMATION REGARDING EMPLOYEE COMPENSATION WITH
9 OTHER EMPLOYEES OF THE BUSINESS;
10 (c) FOR ANY JOB POSTING, THE BUSINESS INCLUDES INFORMATION
11 REGARDING THE SALARY RANGE FOR THE AVAILABLE POSITION;
12 (d) THE BUSINESS DOES NOT RESTRICT EMPLOYEES OF ONE
13 DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION,
14 TRANSGENDER STATUS, RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY
15 TO CERTAIN JOB CLASSIFICATIONS AND MAKES RETENTION AND
16 PROMOTION DECISIONS WITHOUT REGARD TO DISABILITY, RACE, CREED,
17 COLOR, SEX, SEXUAL ORIENTATION, TRANSGENDER STATUS, RELIGION,
18 AGE, NATIONAL ORIGIN, OR ANCESTRY;
19 (e) WAGE AND BENEFIT DISPARITIES ARE CORRECTED WHEN
20 IDENTIFIED TO ENSURE COMPLIANCE WITH EQUAL PAY STANDARDS AND
21 LAWS; AND
22 (f) WAGES AND BENEFITS ARE PERIODICALLY EVALUATED TO
23 ENSURE COMPLIANCE WITH EQUAL PAY STANDARDS AND LAWS, INCLUDING
24 HOW OFTEN SUCH EVALUATION OCCURS.
25 (3) A BUSINESS THAT IS AWARDED A CONTRACT BY A
26 GOVERNMENTAL BODY SHALL REQUIRE THAT ANY SUBCONTRACTOR THAT
27 THE BUSINESS USES TO FULFILL THE TERMS OF THE CONTRACT COMPLIES
28 WITH THE CRITERIA SPECIFIED IN PARAGRAPHS (a) TO (f) OF SUBSECTION
29 (2) OF THIS SECTION.
30 (4) ANY BUSINESS THAT IS AWARDED A CONTRACT BY A
31 GOVERNMENTAL BODY OR THAT IS A SUBCONTRACTOR FOR A BUSINESS
32 THAT WAS AWARDED A CONTRACT BY A GOVERNMENTAL BODY SHALL
33 KEEP AND MAINTAIN THE FOLLOWING INFORMATION FOR THE TERM OF THE
34 CONTRACT WITH THE GOVERNMENTAL BODY:
35 (a) WAGES EARNED BY EMPLOYEES OF THE BUSINESS,
36 CATEGORIZED BY OCCUPATION, AND WITHIN EACH OCCUPATION,
37 CATEGORIZED BY RACE, SEX, AND NATIONAL ORIGIN;
38 (b) THE NUMBER OF EMPLOYEES THAT THE BUSINESS EMPLOYS
39 CATEGORIZED BY OCCUPATION, AND WITHIN EACH OCCUPATION,
40 CATEGORIZED BY RACE, SEX, AND NATIONAL ORIGIN;

1 (c) THE AVERAGE ANNUALIZED SALARIES PAID TO EMPLOYEES, IN
2 THE MANNER MOST CONSISTENT WITH THE EMPLOYER'S COMPENSATION
3 SYSTEM, WITHIN EACH MAJOR JOB CATEGORY, CATEGORIZED BY RACE,
4 SEX, AND NATIONAL ORIGIN; AND

5 (d) THE AVERAGE LENGTH OF EMPLOYMENT BY THE BUSINESS FOR
6 EMPLOYEES IN EACH MAJOR JOB CATEGORY, CATEGORIZED BY RACE, SEX,
7 AND NATIONAL ORIGIN.

8 (5) (a) THE DEPARTMENT OF LABOR AND EMPLOYMENT MAY
9 RECEIVE COMPLAINTS ABOUT A CONTRACTOR OR SUBCONTRACTOR'S
10 POTENTIAL VIOLATIONS OF THE REQUIREMENTS OF THIS SECTION. AFTER
11 RECEIVING A COMPLAINT, THE DEPARTMENT OF LABOR AND EMPLOYMENT
12 MAY INVESTIGATE THE RECORDS THAT A CONTRACTOR AND
13 SUBCONTRACTOR ARE REQUIRED TO KEEP PURSUANT TO SUBSECTION (4)
14 OF THIS SECTION AND IMPOSE FINES PURSUANT TO PARAGRAPH (b) OF THIS
15 SUBSECTION (5) ON A CONTRACTOR OR SUBCONTRACTOR, AS APPLICABLE,
16 FOR THE VIOLATION OF THE REQUIREMENTS OF THIS SECTION.

17 (b) AFTER CONDUCTING AN INVESTIGATION OF A CONTRACTOR OR
18 SUBCONTRACTOR'S RECORDS PURSUANT TO PARAGRAPH (a) OF THIS
19 SUBSECTION (5), IF THE DEPARTMENT OF LABOR AND EMPLOYMENT
20 DETERMINES THAT A CONTRACTOR OR SUBCONTRACTOR HAS KNOWINGLY
21 VIOLATED THE REQUIREMENTS OF THIS SECTION BY FAILING TO COMPLY
22 WITH EQUAL PAY STANDARDS, THE EXECUTIVE DIRECTOR OF THE
23 DEPARTMENT OF LABOR AND EMPLOYMENT MAY IMPOSE A FINE ON THE
24 CONTRACTOR OR SUBCONTRACTOR, AS APPLICABLE, AS FOLLOWS:

25 (I) FOR THE FIRST VIOLATION, FIVE THOUSAND DOLLARS OR AN
26 AMOUNT EQUAL TO ONE PERCENT OF THE COST OF THE CONTRACT OR
27 SUBCONTRACT, AS APPLICABLE, WHICHEVER IS LESS;

28 (II) FOR THE SECOND VIOLATION, TEN THOUSAND DOLLARS OR AN
29 AMOUNT EQUAL TO ONE PERCENT OF THE COST OF THE CONTRACT OR
30 SUBCONTRACT, AS APPLICABLE, WHICHEVER IS LESS; OR

31 (III) FOR THE THIRD VIOLATION AND ANY VIOLATION THEREAFTER,
32 TWENTY-FIVE THOUSAND DOLLARS OR AN AMOUNT EQUAL TO ONE
33 PERCENT OF THE COST OF THE CONTRACT OR SUBCONTRACT, AS
34 APPLICABLE, WHICHEVER IS LESS.

35 (c) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR AND
36 EMPLOYMENT MAY DISMISS A COMPLAINT IN HIS OR HER DISCRETION IF,
37 AFTER CONDUCTING AN INVESTIGATION PURSUANT TO THIS SECTION, THE
38 DEPARTMENT DETERMINES THAT THE CIRCUMSTANCES THAT LED TO THE
39 COMPLAINT WERE THE RESULT OF A MINOR PAPERWORK VIOLATION.

40 (d) A CONTRACTOR OR SUBCONTRACTOR WHO IS FOUND TO BE IN

1 VIOLATION OF THE PROVISIONS OF THIS SECTION MAY APPEAL SUCH
2 FINDING TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR AND
3 EMPLOYMENT. THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
4 DESIGNEE SHALL HOLD A HEARING TO REVIEW SUCH NOTICE OR ORDER AND
5 TAKE FINAL ACTION IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE. FINAL
6 AGENCY ACTION IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO ARTICLE
7 4 OF THIS TITLE.

8 (e) ANY REVENUE COLLECTED FROM THE FINES IMPOSED PURSUANT
9 TO THIS SUBSECTION (5) SHALL BE TRANSMITTED TO THE STATE
10 TREASURER, WHO SHALL CREDIT THE SAME TO THE COLORADO LABOR
11 ENFORCEMENT CASH FUND CREATED IN SECTION 8-17-104, C.R.S.

12 (f) NOTHING IN THIS SUBSECTION (5) SHALL BE CONSTRUED TO
13 LIMIT ANY INDIVIDUAL'S RIGHT TO PURSUE AN ACTION THROUGH THE
14 COLORADO CIVIL RIGHTS DIVISION PURSUANT TO PART 3 OF ARTICLE 34 OF
15 THIS TITLE.

16 (6) IF, AFTER AWARDING A CONTRACT, A GOVERNMENTAL BODY
17 DETERMINES THAT THE CONTRACTOR OR SUBCONTRACTOR PERFORMING
18 WORK ON THE CONTRACT WAS KNOWINGLY NOT IN COMPLIANCE WITH THE
19 PROVISIONS OF THIS SECTION WHILE PERFORMING WORK ON THE
20 CONTRACT, THE GOVERNMENTAL BODY MAY TERMINATE THE CONTRACT.

21 **SECTION 2.** In Colorado Revised Statutes, 8-17-104, **amend** (4)
22 as follows:

23 **8-17-104. Enforcement - violation - penalties - Colorado labor**
24 **enforcement cash fund - creation.** (4) The revenue collected from the
25 fines imposed pursuant to subsection (2) of this section AND PURSUANT
26 TO SECTION 24-103-405 (5), C.R.S., shall be transmitted to the state
27 treasurer, who shall credit the same to the Colorado labor enforcement
28 cash fund, which is hereby created. The general assembly shall make
29 appropriations from the fund as necessary to cover the direct and indirect
30 costs of the department of labor and employment in connection with the
31 requirements of this article AND THE REQUIREMENTS OF SECTION
32 24-103-405 (5), C.R.S. All moneys not expended or encumbered and all
33 interest earned on the investment or deposit of moneys in the fund remain
34 in the fund and do not revert to the general fund or any other fund at the
35 end of any fiscal year.

36 **SECTION 3. Applicability.** This act applies to contracts entered
37 into on and after the effective date of this act.

38 **SECTION 4. Act subject to petition - effective date.** This act
39 takes effect at 12:01 a.m. on the day following the expiration of the
40 ninety-day period after final adjournment of the general assembly (August

1 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part will not take effect
5 unless approved by the people at the general election to be held in
6 November 2016 and, in such case, will take effect on the date of the
7 official declaration of the vote thereon by the governor."

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