

**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**

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**HOUSE SPONSORSHIP**

**Williams and Salazar,**

**SENATE SPONSORSHIP**

**Giron and Ulibarri,**

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**House Committees**

Business, Labor, Economic, & Workforce Development

Appropriations

**Senate Committees**

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**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.**

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**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*

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.*



1 AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES HAS NOT YET  
2 BEEN COMMISSIONED;

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

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

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

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

24 (II) TO THE EXTENT THAT THE STUDY ESTABLISHES THAT  
25 DISPARITIES ATTRIBUTABLE TO PAST OR PRESENT DISCRIMINATION EXIST  
26 OR INHERE IN THE STATE PROCUREMENT PROCESS, TO RECOMMEND  
27 REMEDIAL MEASURES TO ADDRESS THE EFFECTS OF THAT DISCRIMINATION.

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

7           **24-103-902. Definitions.** AS USED IN THIS PART 9, UNLESS THE  
8 CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

19           (II) ONE OR MORE OF THE FOLLOWING:

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

21           (B) NON-HISPANIC CAUCASIAN WOMEN;

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **24-103-903. Disparity study - report.** (1) (a) THE EXECUTIVE  
27 DIRECTOR SHALL COMMISSION A STATE DISPARITY STUDY REGARDING THE

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

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

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

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

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

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

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

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

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

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

26 (II) THE ENTITIES SUBJECT TO THE STUDY PURSUANT TO  
27 PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL COOPERATE FULLY WITH

1     THE INDEPENDENT CONTRACTOR ENGAGED TO CONDUCT THE STUDY.

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

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

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

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

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

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

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

26           (C) PROFESSIONAL SERVICES, INCLUDING LEGAL SERVICES,  
27     ACCOUNTING, INFORMATION TECHNOLOGY SERVICES, MEDICAL SERVICES,

1 TECHNICAL SERVICES, RESEARCH PLANNING, AND CONSULTING SERVICES;

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

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

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

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

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

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

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

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

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



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

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

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

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

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

24 (3) THE EXECUTIVE DIRECTOR SHALL TRANSMIT A COPY OF THE  
25 DISPARITY STUDY FINAL REPORT PRODUCED PURSUANT TO THIS SECTION  
26 TO THE DIRECTOR OF THE MINORITY BUSINESS OFFICE CREATED IN SECTION  
27 24-49.5-102, WHO SHALL POST THE REPORT ON THAT OFFICE'S OFFICIAL

1 WEB SITE.

2 **SECTION 2. Effective date.** This act takes effect July 1, 2013.

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