

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

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

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.**

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 SEVEN STATE
3 DEPARTMENTS WITH SUBSTANTIAL PROCUREMENT ACTIVITY, TO REDUCE
4 THE COSTS OF CONDUCTING THE DISPARITY STUDY WHILE STILL
5 GENERATING ENOUGH VALID QUALITATIVE AND QUANTITATIVE DATA
6 FROM WHICH TO 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; AND

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

18 (b) THE STUDY MUST BE CONDUCTED, AND A FINAL REPORT
19 PREPARED, BY AN ENTITY INDEPENDENT OF THE DEPARTMENT THAT IS
20 SELECTED IN RESPONSE TO A REQUEST FOR PROPOSAL ISSUED IN
21 ACCORDANCE WITH THIS CODE.

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

25 (I) THE LEGISLATIVE AUDIT COMMITTEE CREATED IN SECTION
26 2-3-101, C.R.S.; AND

27 (II) THE HOUSE BUSINESS, LABOR, ECONOMIC, AND WORKFORCE

1 DEVELOPMENT COMMITTEE AND THE SENATE BUSINESS, LABOR, AND
2 TECHNOLOGY COMMITTEE, OR ANY SUCCESSOR COMMITTEES.

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

5 (I) TO DETERMINE WHETHER THERE IS A DISPARITY BETWEEN THE
6 NUMBER OF QUALIFIED HISTORICALLY UNDERUTILIZED BUSINESSES THAT
7 ARE READY, WILLING, AND ABLE TO PERFORM STATE CONTRACTS FOR
8 GOODS AND SERVICES, AND THE NUMBER OF SUCH CONTRACTORS
9 ACTUALLY ENGAGED TO PERFORM SUCH CONTRACTS, WHICH INFORMATION
10 MUST BE ASCERTAINED BY EVALUATING THE PRIME CONTRACTS AND
11 SUBCONTRACTS AWARDED IN THE FOLLOWING INDUSTRIES:

12 (A) CONSTRUCTION, INCLUDING NEW CONSTRUCTION,
13 REMODELING, RENOVATION, MAINTENANCE, DEMOLITION AND REPAIR OF
14 ANY PUBLIC STRUCTURE OR BUILDING, PIPELINE CONSTRUCTION, AND
15 OTHER PUBLIC IMPROVEMENTS;

16 (B) ARCHITECTURE AND ENGINEERING, INCLUDING CONSTRUCTION
17 MANAGEMENT, LANDSCAPE ARCHITECTURE, PLANNING, SURVEYING,
18 MAPPING SERVICES, AND DESIGN, BUILD, AND CONSTRUCTION SERVICES;

19 (C) PROFESSIONAL SERVICES, INCLUDING LEGAL SERVICES,
20 ACCOUNTING, INFORMATION TECHNOLOGY SERVICES, MEDICAL SERVICES,
21 TECHNICAL SERVICES, RESEARCH PLANNING, AND CONSULTING SERVICES;

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

24 (E) GOODS AND SERVICES THAT MAY BE PROVIDED OR PERFORMED
25 WITHOUT PROFESSIONAL LICENSURE OR SPECIAL EDUCATION OR TRAINING,
26 INCLUDING GOODS AND SERVICES RELATING TO MATERIALS, SUPPLIES,
27 EQUIPMENT, MAINTENANCE, AND FOOD.

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

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

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

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

11 (III) A MARKET AREA ANALYSIS THAT PRESENTS THE LEGAL BASIS
12 FOR THE GEOGRAPHICAL MARKET AREA DETERMINATION AND DEFINES THE
13 STATE'S MARKET AREA;

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

17 (V) A PRIME CONTRACTOR DISPARITY ANALYSIS THAT PRESENTS
18 PRIME CONTRACTOR UTILIZATION COMPARED TO PRIME CONTRACTOR
19 AVAILABILITY BY INDUSTRY AND DETERMINES WHETHER THE COMPARISON
20 IS STATISTICALLY SIGNIFICANT;

21 (VI) A SUBCONTRACTOR DISPARITY ANALYSIS THAT PRESENTS
22 SUBCONTRACTOR UTILIZATION COMPARED TO SUBCONTRACTOR
23 AVAILABILITY BY INDUSTRY AND DETERMINES WHETHER THE COMPARISON
24 IS STATISTICALLY SIGNIFICANT;

25 (VII) A QUALITATIVE ANALYSIS THAT PRESENTS THE BUSINESS
26 COMMUNITY'S EXPERIENCES AND PERCEPTIONS OF BARRIERS
27 ENCOUNTERED IN CONTRACTING OR ATTEMPTING TO CONTRACT WITH THE

1 STATE; AND

2 (VIII) RECOMMENDATIONS REGARDING BEST MANAGEMENT
3 PRACTICES AND WAYS TO ENHANCE COLORADO'S CONTRACTING AND
4 PROCUREMENT ACTIVITIES WITH HISTORICALLY UNDERUTILIZED
5 BUSINESSES.

6 (c) (I) ANY CONCLUSION THAT DISCRIMINATION-RELATED
7 DISPARITY EXISTS BETWEEN THE AVAILABILITY AND UTILIZATION OF
8 HISTORICALLY UNDERUTILIZED BUSINESSES MUST BE SUPPORTED BY
9 STATISTICAL EVIDENCE AND MAY BE SUPPLEMENTED OR SUPPORTED BY
10 ANECDOTAL EVIDENCE.

11 (II) IF THE ANALYSIS SUPPORTS A FINDING THAT SUCH DISPARITY
12 EXISTS, THE REPORT MUST INCLUDE RECOMMENDATIONS TO AMELIORATE
13 THE DISPARITY. ANY PROPOSED REMEDIAL MEASURES MUST BE TAILORED
14 TO ADDRESS DOCUMENTED STATISTICAL DISPARITIES IN PROCUREMENT
15 POLICIES.

16 (3) THE EXECUTIVE DIRECTOR SHALL TRANSMIT A COPY OF THE
17 DISPARITY STUDY FINAL REPORT PRODUCED PURSUANT TO THIS SECTION
18 TO THE DIRECTOR OF THE MINORITY BUSINESS OFFICE CREATED IN SECTION
19 24-49.5-102, WHO SHALL POST THE REPORT ON THAT OFFICE'S OFFICIAL
20 WEB SITE.

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

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, and safety.