

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

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 19-0099.02 Nicole Myers x4326

SENATE BILL 19-135

SENATE SPONSORSHIP

Williams A. and Rodriguez, Bridges, Court, Danielson, Donovan, Fenberg, Fields, Foote, Garcia, Ginal, Gonzales, Lee, Moreno, Pettersen, Priola, Story, Tate, Todd, Winter, Zenzinger

HOUSE SPONSORSHIP

Buckner and Buentello, Coleman, Cutter, Duran, Exum, Galindo, Herod, Jackson, Melton, Michaelson Jenet, Valdez A., Esgar, Gonzales-Gutierrez, Hooton, Kennedy, Kipp, Valdez D., Weissman

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

Judiciary
Appropriations

A BILL FOR AN ACT

101 **CONCERNING METHODS TO DETERMINE WHETHER DISPARITIES**
102 **INVOLVING CERTAIN HISTORICALLY UNDERUTILIZED BUSINESSES**
103 **EXIST WITHIN THE STATE PROCUREMENT PROCESS, AND, IN**
104 **CONNECTION THEREWITH, COMMISSIONING A STUDY TO MAKE**
105 **SUCH DETERMINATION, REQUIRING THE DEPARTMENT OF**
106 **PERSONNEL TO TRACK CONTRACTS AWARDED TO HISTORICALLY**
107 **UNDERUTILIZED BUSINESSES, 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 applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

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

HOUSE
3rd Reading Unamended
April 29, 2019

HOUSE
Amended 2nd Reading
April 27, 2019

SENATE
3rd Reading Unamended
April 15, 2019

SENATE
Amended 2nd Reading
April 12, 2019

To ascertain whether disparities exist between the participation of historically underutilized businesses 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 address any discrepancies identified by the study.

The final report including the findings and recommendations from the study must be provided to the members of the general assembly and the executive director of the department of personnel (executive director) no later than December 1, 2020. The bill directs the executive director to transmit a copy of the final report to the minority business office, which shall post the report on its official website. In addition, the executive director is required to include the findings and recommendations from the study in its report to the applicable house and senate committees of reference during its hearing pursuant to the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act".

The executive director is required to develop a method to track the number and percentage of all contracts entered into by all principal departments of the executive branch of state government, institutions of higher education, and the Colorado commission on higher education that are awarded during any calendar year to a historically underutilized business. The executive director is also required to make such information available on the department of personnel's website.

Any entity that is subject to the disparity study is required to respond to a request for information in connection with the study as soon as possible after receiving the request.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 10 to article
3 103 of title 24 as follows:

4 **PART 10**
5 **PROCUREMENT DISPARITY STUDY**

6 **24-103-1001. 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;

1 (b) A FAIR PROCUREMENT PROCESS NOT ONLY ENSURES JUSTICE
2 AND FAIRNESS IN STATE CONTRACTING BUT WILL BROADEN THE
3 PROCUREMENT CONTRACTOR POOL, WHICH WILL RESULT IN EFFICIENCIES
4 STATEWIDE AND, AS WARRANTED, PROMOTE THE GROWTH OF
5 HISTORICALLY UNDERUTILIZED BUSINESSES, THEREBY CREATING JOBS AND
6 STIMULATING THE STATE'S ECONOMY;

7 (c) ALTHOUGH STUDIES ESTABLISHING DISCRIMINATION IN
8 PROCUREMENT FOR CERTAIN INDUSTRIES OR IN CERTAIN LOCALITIES HAVE
9 BEEN CONDUCTED, A COMPREHENSIVE ANALYSIS OF STATE CONTRACTS
10 AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES HAS NOT YET
11 BEEN COMMISSIONED;

12 (d) THE UNITED STATES SUPREME COURT HAS RECOGNIZED THAT
13 DISPARITY STUDIES ARE TOOLS THAT SEEK TO QUALIFY AND QUANTIFY
14 PAST DISCRIMINATION AND RECOMMEND CERTAIN CORRECTIVE MEASURES
15 AS MAY BE WARRANTED BY THE STUDY'S FINDINGS;

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

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

26 (I) DETERMINE THE FREQUENCY WITH WHICH STATE CONTRACTS
27 ARE AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES AND THE

1 MONETARY AMOUNTS OF SUCH AWARDS, COMPARED TO THE FREQUENCY
2 AND SIZE OF CONTRACTS AWARDED TO OTHER BUSINESSES; AND

3 (II) TO THE EXTENT THAT THE STUDY ESTABLISHES THAT
4 DISPARITIES ATTRIBUTABLE TO PAST OR PRESENT DISCRIMINATION EXIST
5 OR INHERE IN THE STATE PROCUREMENT PROCESS, TO RECOMMEND
6 REMEDIAL MEASURES TO ADDRESS THE EFFECTS OF THAT DISCRIMINATION.

7 **24-103-1002. Definitions.** AS USED IN THIS PART 10, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "CONTRACT" HAS THE SAME MEANING AS SET FORTH IN
10 SECTION 24-101-301 (9) AND INCLUDES PUBLIC-PRIVATE PARTNERSHIPS
11 AND OTHER 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) PERSONS WITH PHYSICAL OR MENTAL DISABILITIES; OR

23 (D) MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND
24 TRANSGENDER COMMUNITY; 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;

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 **24-103-1003. 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 BY ALL PRINCIPAL DEPARTMENTS OF THE
4 EXECUTIVE BRANCH OF STATE GOVERNMENT AS SPECIFIED IN SECTION
5 24-1-110, INCLUDING ANY DIVISION, OFFICE, AGENCY, OR OTHER UNIT
6 CREATED WITHIN A PRINCIPAL DEPARTMENT AND INCLUDING INSTITUTIONS
7 OF HIGHER EDUCATION AND THE COLORADO COMMISSION ON HIGHER
8 EDUCATION; EXCEPT THAT THE STUDY SHALL NOT INCLUDE THOSE
9 ENTITIES THAT HAVE ELECTED TO BE EXEMPT FROM THE CODE PURSUANT
10 TO SECTION 24-101-105 (1)(b). THE STUDY SHALL INCLUDE STATE
11 CONTRACTS ENTERED INTO DURING THE 2014-15, 2015-16, 2016-17, AND
12 2017-18 STATE FISCAL YEARS.

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

17 (II) THE ENTITIES SUBJECT TO THE STUDY PURSUANT TO
18 SUBSECTION (1)(a) OF THIS SECTION SHALL COOPERATE FULLY WITH THE
19 INDEPENDENT CONTRACTOR ENGAGED TO CONDUCT THE STUDY.

20 (c) THE STUDY AND FINAL REPORT SETTING FORTH THE STUDY'S
21 METHODOLOGIES, FINDINGS, AND RECOMMENDATIONS MUST BE PROVIDED
22 BY DECEMBER 1, 2020, TO:

23 (I) THE MEMBERS OF THE GENERAL ASSEMBLY; AND

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

1 OFFICE'S OFFICIAL WEBSITE.

2 (d) THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
3 DESIGNEE SHALL INCLUDE THE FINDINGS AND RECOMMENDATIONS FROM
4 THE FINAL REPORT REQUIRED BY SUBSECTION (1)(c) OF THIS SECTION IN
5 ITS REPORT TO THE APPLICABLE HOUSE AND SENATE COMMITTEES OF
6 REFERENCE REQUIRED BY THE "STATE MEASUREMENT FOR
7 ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART)
8 GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

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

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

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

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

25 (C) PROFESSIONAL SERVICES, INCLUDING LEGAL SERVICES,
26 ACCOUNTING, INFORMATION TECHNOLOGY SERVICES, MEDICAL SERVICES,
27 TECHNICAL SERVICES, RESEARCH PLANNING, AND CONSULTING SERVICES;

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

3 (E) GOODS AND SERVICES THAT MAY BE PROVIDED OR PERFORMED
4 WITHOUT PROFESSIONAL LICENSURE OR SPECIAL EDUCATION OR TRAINING,
5 INCLUDING, BUT NOT LIMITED TO, GOODS AND SERVICES RELATING TO
6 MATERIALS, SUPPLIES, EQUIPMENT, MAINTENANCE, PERSONNEL,
7 PHARMACEUTICALS, AND FOOD;

8 (II) TO DETERMINE WHETHER, OF THE TOTAL AMOUNT SPENT ON
9 STATE CONTRACTS IN A FISCAL YEAR, THERE IS A DISPARITY BETWEEN THE
10 PERCENTAGE OF SPENDING ATTRIBUTABLE TO CONTRACTS AWARDED TO
11 QUALIFIED HISTORICALLY UNDERUTILIZED BUSINESSES AND THE
12 PERCENTAGE OF STATE CONTRACTS THAT WERE AWARDED TO
13 HISTORICALLY UNDERUTILIZED BUSINESSES IN THAT FISCAL YEAR; AND

14 (III) TO DETERMINE WHAT CHANGES, IF ANY, SHOULD BE MADE TO
15 STATE POLICIES AFFECTING HISTORICALLY UNDERUTILIZED BUSINESSES.

16 (b) THE DISPARITY STUDY MUST SPECIFICALLY INCLUDE THE
17 FOLLOWING ANALYSES, BOTH FOR THE HISTORICALLY UNDERUTILIZED
18 BUSINESSES AS A GROUP AND FOR EACH SUBGROUP, AS SET FORTH IN
19 SECTION 24-103-1002 (3)(a)(II):

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

22 (II) A SUBCONTRACTOR UTILIZATION ANALYSIS THAT PRESENTS
23 THE DISTRIBUTION OF SUBCONTRACTS BY THE INDUSTRIES DESCRIBED IN
24 SUBSECTION (2)(a)(I) OF THIS SECTION;

25 (III) A MARKET AREA ANALYSIS THAT PRESENTS THE LEGAL BASIS
26 FOR THE GEOGRAPHICAL MARKET AREA DETERMINATION AND DEFINES THE
27 STATE'S MARKET AREA;

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

4 (V) A PRIME CONTRACTOR DISPARITY ANALYSIS THAT PRESENTS
5 PRIME CONTRACTOR UTILIZATION COMPARED TO PRIME CONTRACTOR
6 AVAILABILITY BY INDUSTRY AND DETERMINES WHETHER THE COMPARISON
7 IS STATISTICALLY SIGNIFICANT;

8 (VI) A SUBCONTRACTOR DISPARITY ANALYSIS THAT PRESENTS
9 SUBCONTRACTOR UTILIZATION COMPARED TO SUBCONTRACTOR
10 AVAILABILITY BY INDUSTRY AND DETERMINES WHETHER THE COMPARISON
11 IS STATISTICALLY SIGNIFICANT;

12 (VII) A QUALITATIVE ANALYSIS THAT PRESENTS THE BUSINESS
13 COMMUNITY'S EXPERIENCES AND PERCEPTIONS OF BARRIERS
14 ENCOUNTERED IN CONTRACTING OR ATTEMPTING TO CONTRACT WITH THE
15 STATE; AND

16 (VIII) RECOMMENDATIONS REGARDING BEST MANAGEMENT
17 PRACTICES AND WAYS TO ENHANCE COLORADO'S CONTRACTING AND
18 PROCUREMENT ACTIVITIES WITH HISTORICALLY UNDERUTILIZED
19 BUSINESSES.

20 (c) (I) ANY CONCLUSION THAT DISCRIMINATION-RELATED
21 DISPARITY EXISTS BETWEEN THE AVAILABILITY AND UTILIZATION OF
22 HISTORICALLY UNDERUTILIZED BUSINESSES MUST BE SUPPORTED BY
23 STATISTICAL EVIDENCE AND MAY BE SUPPLEMENTED OR SUPPORTED BY
24 ANECDOTAL EVIDENCE.

25 (II) IF THE ANALYSIS SUPPORTS A FINDING THAT SUCH DISPARITY
26 EXISTS, THE REPORT MUST INCLUDE RECOMMENDATIONS TO ADDRESS THE
27 DISPARITY, INCLUDING ANY STATUTORY CHANGES LIKELY TO CURE,

1 MITIGATE, OR REDRESS SUCH DISPARITY. ANY PROPOSED REMEDIAL
2 MEASURES MUST BE TAILORED TO ADDRESS DOCUMENTED STATISTICAL
3 DISPARITIES IN PROCUREMENT POLICIES.

4 (3) THE GENERAL ASSEMBLY MAY ANNUALLY APPROPRIATE TO THE
5 DEPARTMENT OF PERSONNEL SUCH AMOUNT AS IT DEEMS APPROPRIATE
6 FOR THE PURPOSES SPECIFIED IN THIS PART 10. ANY UNEXPENDED AND
7 UNENCUMBERED MONEY FROM AN APPROPRIATION MADE FOR THE
8 PURPOSES OF THIS PART 10 REMAINS AVAILABLE FOR EXPENDITURE BY THE
9 DEPARTMENT FOR THE PURPOSES OF THIS PART 10 IN THE NEXT FISCAL
10 YEAR WITHOUT FURTHER APPROPRIATION.

11 =====

12 **24-103-1004. Requests for information - disparity study.** THE
13 EXECUTIVE DIRECTOR OR THE ENTITY THAT THE EXECUTIVE DIRECTOR
14 COMMISSIONS TO CONDUCT A DISPARITY STUDY PURSUANT TO SECTION
15 24-103-1003 MAY REQUEST INFORMATION IN FURTHERANCE OF THE
16 DISPARITY STUDY FROM EACH ENTITY THAT IS SUBJECT TO THE STUDY,
17 INCLUDING EACH PRINCIPLE DEPARTMENT OF THE EXECUTIVE BRANCH OF
18 STATE GOVERNMENT AS SPECIFIED IN SECTION 24-1-110, INCLUDING ANY
19 DIVISION, OFFICE, AGENCY, OR OTHER UNIT CREATED WITHIN A PRINCIPLE
20 DEPARTMENT, AND INCLUDING INSTITUTIONS OF HIGHER EDUCATION AND
21 THE COLORADO COMMISSION ON HIGHER EDUCATION; EXCEPT THAT SUCH
22 REQUESTS MAY NOT BE MADE OF ENTITIES THAT HAVE ELECTED TO BE
23 EXEMPT FROM THE CODE PURSUANT TO SECTION 24-101-105 (1)(b). EACH
24 ENTITY THAT IS SUBJECT TO THE DISPARITY STUDY SHALL RESPOND TO ANY
25 SUCH REQUEST FOR INFORMATION IN FURTHERANCE OF THE DISPARITY
26 STUDY AS SOON AS PRACTICABLE AFTER RECEIVING THE REQUEST.

27 **SECTION 2. Appropriation.** For the 2019-20 state fiscal

1 year, \$650,000 is appropriated to the department of personnel for use by
2 the division of accounts and control. This appropriation is from the
3 general fund. To implement this act, the division may use this
4 appropriation for operating expenses related to procurement and
5 contracts.

6 **SECTION 3. Effective date.** This act takes effect July 1, 2019.

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