

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

INTRODUCED

LLS NO. 21-0647.01 Esther van Mourik x4215

HOUSE BILL 21-1168

HOUSE SPONSORSHIP

Bacon and Ricks,

SENATE SPONSORSHIP

Kolker,

House Committees

Transportation & Local Government

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING HISTORICALLY UNDERUTILIZED BUSINESSES IN LOCAL**
102 **GOVERNMENT PROCUREMENT.**

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>.)

The bill requires local governments, including school districts, with a procurement budget of a certain size to collect data regarding the participation of historically underutilized businesses in local government procurement for a 5-year period and requires the local government to annually report that data to the secretary of state. The bill requires the secretary of state to share summarized data with the department of local

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.

affairs. The bill further requires the department of local affairs to annually include the summarized data received from the secretary of state as part of the department's presentation to its committee of reference at a hearing held pursuant to the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act".

The bill defines a historically underutilized business as a business that is at least 51% owned and controlled, in both the management and day-to-day business decisions, by one or more individuals who are:

- Members of a racial or ethnic minority group;
- Non-Hispanic Caucasian women;
- Persons with physical or mental disabilities;
- Members of the lesbian, gay, bisexual, and transgender community; or
- Veterans.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 15 to article
3 1 of title 29 as follows:

4 **PART 15**

5 **TRACKING DATA REGARDING HISTORICALLY**

6 **UNDERUTILIZED BUSINESSES IN**

7 **LOCAL GOVERNMENT PROCUREMENT**

8 **29-1-1501. Legislative declaration - intent.** (1) THE GENERAL
9 ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

10 (a) IT IS IMPERATIVE THAT THE LOCAL GOVERNMENT
11 PROCUREMENT PROCESS BE FREE FROM BIAS SO THAT ALL QUALIFIED
12 PERSONS AND ENTITIES MAY COMPETE FOR LOCAL GOVERNMENT BUSINESS;

13 (b) A FAIR PROCUREMENT PROCESS NOT ONLY ENSURES JUSTICE
14 AND FAIRNESS IN LOCAL GOVERNMENT CONTRACTING BUT BROADENS THE
15 PROCUREMENT CONTRACTOR POOL, WHICH RESULTS IN EFFICIENCIES AND,
16 AS WARRANTED, PROMOTES THE GROWTH OF HISTORICALLY
17 UNDERUTILIZED BUSINESSES, THEREBY CREATING JOBS AND STIMULATING

1 THE LOCAL GOVERNMENT'S ECONOMY;

2 (c) IN 1989, THE UNITED STATES SUPREME COURT ESTABLISHED
3 SUBSTANTIAL LIMITATIONS ON THE ABILITY OF STATE AND LOCAL
4 GOVERNMENTS TO ENACT AND OPERATE PROGRAMS BENEFITTING A GROUP
5 BASED ON RACE OR ETHNICITY. IN ORDER TO SUPPORT RACE-CONSCIOUS
6 PROGRAMS THE GOVERNMENT MUST:

7 (I) ESTABLISH AND THOROUGHLY EXAMINE EVIDENCE TO
8 DETERMINE WHETHER THERE IS A COMPELLING GOVERNMENTAL INTEREST
9 IN REMEDYING SPECIFIC PAST IDENTIFIED DISCRIMINATION OR ITS PRESENT
10 EFFECTS; AND

11 (II) ENSURE THAT ANY PROGRAM ADOPTED IS NARROWLY
12 TAILORED TO ACHIEVE THE GOAL OF REMEDYING THE IDENTIFIED
13 DISCRIMINATION;

14 (d) IN ORDER TO SUPPORT GENDER-CONSCIOUS PROGRAMS, THE
15 GOVERNMENT MUST MEET SIMILAR COMPONENTS AS DESCRIBED FOR
16 RACE-CONSCIOUS PROGRAMS, BUT THEY ARE MORE EASILY MET;

17 (e) IN ORDER TO MEET THE REQUIREMENTS SET OUT BY THE
18 UNITED STATES SUPREME COURT FOR RACE- OR GENDER-CONSCIOUS
19 HIRING PROGRAMS, SOME GOVERNMENTAL ENTITIES ARE CONDUCTING
20 DISPARITY STUDIES;

21 (f) HOWEVER, DISPARITY STUDIES CAN BE TIME-CONSUMING,
22 DEMANDING, AND COSTLY, RANGING FROM FIFTEEN THOUSAND DOLLARS
23 TO HUNDREDS OF THOUSANDS OF DOLLARS, DEPENDING ON THE SIZE OF
24 THE LOCAL GOVERNMENT, FOR LOCAL GOVERNMENT STAFF; AND

25 (g) TRACKING SPECIFIC DATA REGARDING HISTORICALLY
26 UNDERUTILIZED BUSINESSES THAT ARE AWARDED LOCAL GOVERNMENT
27 CONTRACTS IS A USEFUL FIRST STEP IN DETERMINING WHETHER LOCAL

1 GOVERNMENT PROCUREMENT IS FREE FROM BIAS.

2 (2) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT CERTAIN
3 LOCAL GOVERNMENTS START TRACKING NECESSARY DATA SO THAT A
4 FUTURE DISPARITY STUDY CAN DETERMINE THE FREQUENCY WITH WHICH
5 LOCAL GOVERNMENT CONTRACTS ARE AWARDED TO HISTORICALLY
6 UNDERUTILIZED BUSINESSES.

7 **29-1-1502. Definitions.** AS USED IN THIS PART 15, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "CONTRACT" MEANS A LEGALLY BINDING AGREEMENT
10 BETWEEN A LOCAL GOVERNMENT AND THE SELLER OF GOODS OR SERVICES.

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

13 (3) "HISTORICALLY UNDERUTILIZED BUSINESS" MEANS A BUSINESS
14 THAT IS AT LEAST FIFTY-ONE PERCENT OWNED AND CONTROLLED, IN BOTH
15 THE MANAGEMENT AND DAY-TO-DAY BUSINESS DECISIONS, BY ONE OR
16 MORE INDIVIDUALS WHO ARE:

17 (a) UNITED STATES CITIZENS OR PERMANENT RESIDENTS; AND

18 (b) ONE OR MORE OF THE FOLLOWING:

19 (I) MEMBERS OF A RACIAL OR ETHNIC MINORITY GROUP;

20 (II) NON-HISPANIC CAUCASIAN WOMEN;

21 (III) PERSONS WITH PHYSICAL OR MENTAL DISABILITIES;

22 (IV) MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND
23 TRANSGENDER COMMUNITY; OR

24 (V) VETERANS.

25 (4) "LOCAL GOVERNMENT" MEANS ANY COUNTY, CITY AND
26 COUNTY, CITY, TOWN, OR SPECIAL DISTRICT, INCLUDING ANY COUNTY,
27 CITY AND COUNTY, CITY, OR TOWN THAT HAS ADOPTED A HOME RULE

1 CHARTER, AND ANY SCHOOL DISTRICT ORGANIZED AND EXISTING
2 PURSUANT TO ARTICLE 20 OF TITLE 22, BUT NOT INCLUDING A LOCAL
3 COLLEGE DISTRICT, WITH AN ANNUAL OPERATING BUDGET OF FIVE
4 HUNDRED MILLION DOLLARS.

5 (5) "PERSONS WITH PHYSICAL OR MENTAL DISABILITIES" MEANS
6 PERSONS WHO:

7 (a) HAVE IMPAIRMENTS THAT SUBSTANTIALLY LIMIT ONE OR MORE
8 MAJOR LIFE ACTIVITIES;

9 (b) ARE REGARDED GENERALLY BY THE COMMUNITY AS HAVING
10 A DISABILITY; AND

11 (c) WHOSE DISABILITIES SUBSTANTIALLY LIMIT THEIR ABILITY TO
12 ENGAGE IN COMPETITIVE BUSINESS.

13 (6) "PROCUREMENT" MEANS ALL TYPES OF LOCAL GOVERNMENT
14 PURCHASING BY CONTRACT FOR CONSTRUCTION, PROFESSIONAL SERVICES,
15 GOODS, OR OTHER SERVICES.

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

17 (a) AFRICAN AMERICAN PERSONS, MEANING INDIVIDUALS HAVING
18 ORIGINS IN ANY OF THE BLACK RACIAL GROUPS;

19 (b) HISPANIC AMERICAN PERSONS, INCLUDING PERSONS OF
20 MEXICAN, PUERTO RICAN, CUBAN, CENTRAL OR SOUTH AMERICAN, OR
21 OTHER SPANISH OR PORTUGUESE CULTURE OR ORIGIN, REGARDLESS OF
22 RACE;

23 (c) ASIAN AMERICAN PERSONS, INCLUDING PERSONS WHOSE
24 ORIGINS ARE FROM JAPAN, CHINA, TAIWAN, KOREA, VIETNAM, LAOS,
25 CAMBODIA, THE PHILIPPINES, SAMOA, THE UNITED STATES TERRITORIES
26 OF THE PACIFIC, OR THE NORTHERN MARIANA ISLANDS; OR PERSONS
27 WHOSE ORIGINS ARE FROM SUBCONTINENT ASIA, INCLUDING PERSONS

1 WHOSE ORIGINS ARE FROM INDIA, PAKISTAN, BANGLADESH, SRI LANKA,
2 BHUTAN, OR NEPAL; OR

3 (d) NATIVE AMERICAN PERSONS, INCLUDING PERSONS WHO ARE
4 AMERICAN INDIANS, ESKIMOS, ALEUTS, OR HAWAIIANS OF POLYNESIAN
5 DESCENT.

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

8 (8) "VETERANS" MEANS PERSONS WHO ACTIVELY SERVED IN THE
9 UNITED STATES ARMED FORCES AND WHO WERE DISCHARGED OR
10 RELEASED UNDER CONDITIONS OTHER THAN DISHONORABLE, IN
11 ACCORDANCE WITH U.S.C. TITLE 38, AS AMENDED. "VETERANS" INCLUDES
12 PERSONS SERVING OR WHO SERVED IN THE NATIONAL GUARD OR AS
13 RESERVISTS.

14 **29-1-1503. Requirement to track data regarding local**
15 **government contracts.** (1) ON AND AFTER JULY 15, 2023, AND THROUGH
16 JULY 15, 2028, A LOCAL GOVERNMENT SHALL ANNUALLY COLLECT DATA
17 REGARDING THE PARTICIPATION OF HISTORICALLY UNDERUTILIZED
18 BUSINESSES IN LOCAL GOVERNMENT PROCUREMENT. THE DATA MUST
19 INCLUDE:

20 (a) THE NAME OF THE HISTORICALLY UNDERUTILIZED BUSINESS;

21 (b) THE TYPE OF SERVICE OR GOOD BEING SOUGHT;

22 (c) THE AMOUNT OF THE CONTRACT;

23 (d) WHETHER A SUBCONTRACTOR IS A HISTORICALLY
24 UNDERUTILIZED BUSINESS; AND

25 (e) WHETHER THE OWNER OR OWNERS OF THE HISTORICALLY
26 UNDERUTILIZED BUSINESS ARE MEMBERS OF A RACIAL OR ETHNIC
27 MINORITY GROUP OR NON-HISPANIC CAUCASIAN WOMEN.

1 (2) (a) ON OR BEFORE NOVEMBER 15, 2024, AND ON OR BEFORE
2 EACH NOVEMBER 15 THEREAFTER THROUGH NOVEMBER 15, 2029, THE
3 LOCAL GOVERNMENT SHALL REPORT THE DATA, IN WRITING, TO THE
4 SECRETARY OF STATE. THE SECRETARY OF STATE SHALL ANNUALLY SHARE
5 A SUMMARY OF THE DATA RECEIVED FROM LOCAL GOVERNMENTS UNDER
6 SUBSECTION (1) OF THIS SECTION WITH THE DEPARTMENT OF LOCAL
7 AFFAIRS.

8 (b) THE DEPARTMENT OF LOCAL AFFAIRS SHALL ANNUALLY
9 INCLUDE THE SUMMARIZED DATA RECEIVED FROM THE SECRETARY OF
10 STATE AS PART OF THE DEPARTMENT'S PRESENTATION TO ITS COMMITTEE
11 OF REFERENCE AT A HEARING HELD PURSUANT TO SECTION 2-7-203 (2)(a)
12 OF THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND
13 TRANSPARENT (SMART) GOVERNMENT ACT".

14 **SECTION 2. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly; except
17 that, if a referendum petition is filed pursuant to section 1 (3) of article V
18 of the state constitution against this act or an item, section, or part of this
19 act within such period, then the act, item, section, or part will not take
20 effect unless approved by the people at the general election to be held in
21 November 2022 and, in such case, will take effect on the date of the
22 official declaration of the vote thereon by the governor.