

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

REVISED

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

LLS NO. 21-0647.01 Esther van Mourik x4215

HOUSE BILL 21-1168

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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

SENATE
2nd Reading Unamended
May 10, 2021

HOUSE
3rd Reading Unamended
April 26, 2021

HOUSE
Amended 2nd Reading
April 23, 2021

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:

PART 15

IDENTIFYING BARRIERS TO

HISTORICALLY UNDERUTILIZED BUSINESSES IN

LOCAL GOVERNMENT PROCUREMENT

29-1-1501. Legislative declaration. (1) THE GENERAL ASSEMBLY

9 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; AND
2 (c) ESTABLISHING A PILOT PROJECT TO IDENTIFY THE PERCEPTUAL
3 AND SUBSTANTIAL BARRIERS TO ENTRY FOR HISTORICALLY
4 UNDERUTILIZED BUSINESSES IN LOCAL GOVERNMENT PROCUREMENT IS THE
5 APPROPRIATE WAY TO START THIS CONVERSATION AT THE STATE
6 GOVERNMENT LEVEL.

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

9 (1) "HISTORICALLY UNDERUTILIZED BUSINESS" MEANS A BUSINESS
10 THAT IS AT LEAST FIFTY-ONE PERCENT OWNED AND CONTROLLED, IN BOTH
11 THE MANAGEMENT AND DAY-TO-DAY BUSINESS DECISIONS, BY ONE OR
12 MORE INDIVIDUALS WHO ARE:

13 (a) UNITED STATES CITIZENS OR PERMANENT RESIDENTS; AND
14 (b) ONE OR MORE OF THE FOLLOWING:
15 (I) MEMBERS OF A RACIAL OR ETHNIC MINORITY GROUP;
16 (II) NON-HISPANIC CAUCASIAN WOMEN;
17 (III) PERSONS WITH PHYSICAL OR MENTAL DISABILITIES;
18 (IV) MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND
19 TRANSGENDER COMMUNITY; OR
20 (V) VETERANS.

21 (2) "LOCAL GOVERNMENT" MEANS ANY COUNTY, CITY AND
22 COUNTY, CITY, TOWN, OR SPECIAL DISTRICT, INCLUDING ANY COUNTY,
23 CITY AND COUNTY, CITY, OR TOWN THAT HAS ADOPTED A HOME RULE
24 CHARTER, AND ANY SCHOOL DISTRICT ORGANIZED AND EXISTING
25 PURSUANT TO ARTICLE 20 OF TITLE 22, BUT NOT INCLUDING A LOCAL
26 COLLEGE DISTRICT.

27 (3) "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 ABILITY TO
7 ENGAGE IN COMPETITIVE BUSINESS.

8 (4) "PROCUREMENT" MEANS ALL TYPES OF LOCAL GOVERNMENT
9 PURCHASING BY CONTRACT FOR CONSTRUCTION, PROFESSIONAL SERVICES,
10 GOODS, OR OTHER SERVICES.

11 (5) "PROGRAM" MEANS A HISTORICALLY UNDERUTILIZED BUSINESS
12 PREFERENCE PROGRAM FOR LOCAL GOVERNMENT PROCUREMENT.

13 (6) "RACIAL OR ETHNIC MINORITY GROUP" MEANS:
14 (a) AFRICAN AMERICAN PERSONS, MEANING INDIVIDUALS HAVING
15 ORIGINS IN ANY OF THE BLACK RACIAL GROUPS;
16 (b) HISPANIC AMERICAN PERSONS, INCLUDING PERSONS OF
17 MEXICAN, PUERTO RICAN, CUBAN, CENTRAL OR SOUTH AMERICAN, OR
18 OTHER SPANISH OR PORTUGUESE CULTURE OR ORIGIN, REGARDLESS OF
19 RACE;

20 (c) ASIAN AMERICAN PERSONS, INCLUDING PERSONS WHOSE
21 ORIGINS ARE FROM JAPAN, CHINA, TAIWAN, KOREA, VIETNAM, LAOS,
22 CAMBODIA, THE PHILIPPINES, SAMOA, THE UNITED STATES TERRITORIES
23 OF THE PACIFIC, OR THE NORTHERN MARIANA ISLANDS; OR PERSONS
24 WHOSE ORIGINS ARE FROM SUBCONTINENT ASIA, INCLUDING PERSONS
25 WHOSE ORIGINS ARE FROM INDIA, PAKISTAN, BANGLADESH, SRI LANKA,
26 BHUTAN, OR NEPAL; OR

27 (d) NATIVE AMERICAN PERSONS, INCLUDING PERSONS WHO ARE

1 AMERICAN INDIANS, ESKIMOS, ALEUTS, OR HAWAIIANS OF POLYNESIAN
2 DESCENT.

3 (7) "VETERANS" MEANS PERSONS WHO ACTIVELY SERVED IN THE
4 UNITED STATES ARMED FORCES AND WHO WERE DISCHARGED OR
5 RELEASED UNDER CONDITIONS OTHER THAN BAD CONDUCT OR
6 DISHONORABLE, IN ACCORDANCE WITH U.S.C. TITLE 38, AS AMENDED.
7 "VETERANS" INCLUDES PERSONS SERVING OR WHO SERVED IN THE
8 NATIONAL GUARD OR AS RESERVISTS.

9 **29-1-1503. Identifying barriers to entry for historically**
10 **underutilized businesses in local government procurement - pilot**
11 **program.** (1) NO LATER THAN AUGUST 13, 2021, THE DEPARTMENT OF
12 LOCAL AFFAIRS SHALL ESTABLISH A PILOT PROGRAM TO HELP LOCAL
13 GOVERNMENTS IDENTIFY PERCEPTUAL AND SUBSTANTIAL BARRIERS TO
14 ENTRY FOR HISTORICALLY UNDERUTILIZED BUSINESSES IN LOCAL
15 GOVERNMENT PROCUREMENT. THE DEPARTMENT OF LOCAL AFFAIRS SHALL
16 ENSURE THAT THE LOCAL GOVERNMENTS THAT OPT IN TO THE PILOT
17 PROGRAM ARE REPRESENTATIVE OF THE LOCAL GOVERNMENTS THAT
18 INTERSECT THE RURAL, URBAN, AND SUBURBAN GEOGRAPHIES OF THE
19 STATE AND ARE REPRESENTATIVE OF THE VARYING TYPES OF LOCAL
20 GOVERNMENTS. THE PILOT PROGRAM MUST INCLUDE AT LEAST FIVE
21 DIVERSE LOCAL GOVERNMENTS.

22 (2) THE LOCAL GOVERNMENTS PARTICIPATING IN THE PILOT
23 PROGRAM SHALL:

24 (a) IDENTIFY PROGRAM IMPLEMENTATION NEEDS, SUCH AS LABOR
25 AND TECHNOLOGY;
26 (b) DETERMINE THE APPROPRIATE SIZE CONTRACTS THAT WOULD
27 BENEFIT FROM A PROGRAM;

1 (c) DETERMINE THE APPROPRIATE TYPE OF CONTRACTS THAT
2 WOULD BENEFIT FROM A PROGRAM, SUCH AS, CONSTRUCTION OR SERVICE
3 CONTRACTS, OR SHORT-TERM OR LONG-TERM CONTRACTS;

4 (d) ESTABLISH A REASONABLE THRESHOLD FOR THE AMOUNT OF A
5 LOCAL GOVERNMENT'S OPERATING BUDGET THAT SHOULD BE ALLOCATED
6 TO THE ESTABLISHMENT AND MAINTENANCE OF A PROGRAM;

7 (e) UNDERSTAND THE AVAILABLE PROGRAM SOFTWARE AND
8 COSTS;

9 (f) DETERMINE HOW CAN WE STANDARDIZE THE DATA ACROSS
10 LOCAL GOVERNMENTS TO BEING SUBMITTED TO THE STATE;

11 (g) DETERMINE THE REQUIRED MINIMUM PARTICIPATION GOALS OR
12 PARTICIPATION BENCHMARKS OF HISTORICALLY UNDERUTILIZED
13 BUSINESSES TO DETERMINE IF THE LOCAL GOVERNMENT'S PROGRAM IS
14 FAIR;

15 (h) DETERMINE WHICH TYPES OF HISTORICALLY UNDERUTILIZED
16 BUSINESSES, AS SPECIFIED IN SECTION 29-1-1502 (1)(b), APPEAR TO BE
17 MORE OR LESS IMPACTED;

18 (i) CREATE A SAMPLE PROGRAM THAT ALL LOCAL GOVERNMENTS
19 MAY USE AND ARTICULATE THE NECESSARY STEPS TO BUILD A PROGRAM;
20 AND

21 (j) HELP ARTICULATE PROGRAM GOALS AND TARGETS, SUCH AS
22 DETERMINING WHY A PROGRAM IS IMPORTANT FOR THE LOCAL
23 GOVERNMENT AND WHAT OUTCOMES THE LOCAL GOVERNMENTS WISH TO
24 SEE FROM PROGRAM IMPLEMENTATION.

25 (2) A PILOT PROGRAM PARTICIPANT MAY COLLABORATE WITH THE
26 DEPARTMENT OF LOCAL AFFAIRS AND THE GENERAL ASSEMBLY ON FUTURE
27 LEGISLATION REQUIRING LOCAL GOVERNMENTS TO ESTABLISH PROGRAMS.

1 (3) (a) IN JANUARY 2022, THE DEPARTMENT OF LOCAL AFFAIRS
2 SHALL REPORT ON THE PROGRESS OF THE PILOT PROJECT AS PART OF THE
3 DEPARTMENT'S PRESENTATION TO ITS COMMITTEE OF REFERENCE AT A
4 HEARING HELD PURSUANT TO SECTION 2-7-203 (2)(a) OF THE "STATE
5 MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT
6 (SMART) GOVERNMENT ACT".

7 (b) IN JANUARY 2023, THE DEPARTMENT OF LOCAL AFFAIRS SHALL
8 INCLUDE THE FINDINGS OF THE PILOT PROJECT AS PART OF THE
9 DEPARTMENT'S PRESENTATION TO ITS COMMITTEE OF REFERENCE AT A
10 HEARING HELD PURSUANT TO SECTION 2-7-203 (2)(a) OF THE "STATE
11 MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT
12 (SMART) GOVERNMENT ACT".

13 **SECTION 2. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, or safety.