

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Business, Labor, & Technology.

SB22-163 be amended as follows:

1 Amend printed bill, page 3, strike lines 5 and 6 and substitute:

2 "REMEDIATION OF STATE PROCUREMENT DISPARITIES
3 THAT AFFECT HISTORICALLY UNDERUTILIZED BUSINESSES".

4 Page 4, line 3, strike "TITLED".

5 Page 4, strikes lines 4 through 27.

6 Strike pages 5 through 9.

7 Page 10, strike lines 1 through 16 and substitute: "IT FOUND, DETERMINED
8 AND DECLARED, IN SECTION 24-103-1001, THE IMPORTANCE OF ENSURING
9 AN EQUITABLE STATE PROCUREMENT PROCESS;

10 (b) AS REQUIRED BY SENATE BILL 19-135, THE DEPARTMENT
11 CONTRACTED WITH AN ENTITY INDEPENDENT OF THE DEPARTMENT TO
12 CONDUCT A STATE DISPARITY STUDY REGARDING THE PARTICIPATION OF
13 HISTORICALLY UNDERUTILIZED BUSINESSES, WHICH INCLUDED A REVIEW
14 OF MINORITY-OWNED BUSINESSES, WOMEN-OWNED BUSINESSES,
15 BUSINESSES OWNED BY PERSONS WITH DISABILITIES, AND BUSINESSES
16 OWNED BY MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER
17 COMMUNITY, IN STATE CONTRACTS ENTERED INTO BY ANY DEPARTMENT,
18 AGENCY, OR INSTITUTION OF THE EXECUTIVE BRANCH OF STATE
19 GOVERNMENT;

20 (c) THE STATE DISPARITY STUDY EXAMINED WHETHER A DISPARITY
21 EXISTS BETWEEN THE PERCENTAGE OF STATE CONTRACT DOLLARS GOING
22 TO HISTORICALLY UNDERUTILIZED BUSINESSES AND THE PERCENTAGE
23 THAT MIGHT BE EXPECTED TO GO TO THOSE BUSINESSES BASED ON THE
24 RELATIVE NUMBER OF THOSE BUSINESSES THAT ARE READY, WILLING AND
25 ABLE TO PERFORM DIFFERENT TYPES, SIZES AND LOCATIONS OF STATE
26 CONTRACTS;

27 (d) THE INDEPENDENT ENTITY COMPLETED THE REQUIRED STATE
28 DISPARITY STUDY AND ISSUED THE "2020 STATE OF COLORADO DISPARITY
29 STUDY FINAL REPORT" IN NOVEMBER 2020, WHICH FOUND THAT:

30 (I) MINORITY-OWNED AND WOMEN-OWNED BUSINESSES RECEIVED
31 ABOUT EIGHT PERCENT OF STATE CONTRACT DOLLARS, BELOW THE
32 TWENTY-EIGHT PERCENT EXPECTED FROM THE AVAILABILITY ANALYSIS;

33 (II) UTILIZATION OF FIRMS OWNED BY PERSONS WITH DISABILITIES
34 WAS LESS THAN ONE PERCENT OF CONTRACT DOLLARS, BELOW THE
35 TWELVE PERCENT EXPECTED FROM THE AVAILABILITY ANALYSIS,

36 (III) A VERY SMALL PERCENTAGE OF CONTRACT DOLLARS WENT TO

1 BUSINESSES CERTIFIED AS BEING OWNED BY MEMBERS OF THE LESBIAN,
2 GAY, BISEXUAL, AND TRANSGENDER COMMUNITY (LGBT-CERTIFIED
3 BUSINESSES), BUT BECAUSE A VERY SMALL NUMBER OF BUSINESSES IN THE
4 AVAILABILITY ANALYSIS WERE LGBT-CERTIFIED BUSINESSES, THAT
5 UTILIZATION IS COMPARABLE TO THE AVAILABILITY BENCHMARK FOR
6 LGBT-CERTIFIED BUSINESSES;

7 (IV) THERE WAS A SUBSTANTIAL DISPARITY BETWEEN UTILIZATION
8 AND AVAILABILITY FOR FIRMS OWNED BY AFRICAN AMERICAN PERSONS,
9 HISPANIC AMERICAN PERSONS, NATIVE AMERICAN PERSONS, WHITE
10 WOMEN, AND PERSONS WITH DISABILITIES FOR STATE CONSTRUCTION,
11 CONSTRUCTION-RELATED PROFESSIONAL SERVICES, OTHER PROFESSIONAL
12 SERVICES, GOODS AND OTHER SERVICES CONTRACTS;

13 (V) THERE WAS A SUBSTANTIAL DISPARITY FOR BUSINESSES
14 OWNED BY ASIAN-AMERICAN PERSONS FOR OTHER PROFESSIONAL
15 SERVICES CONTRACTS;

16 (VI) FOR STATE BROKERAGE AND INVESTMENT CONTRACTS, THERE
17 WERE SUBSTANTIAL DISPARITIES BETWEEN UTILIZATION AND
18 AVAILABILITY OF BUSINESSES OWNED BY AFRICAN AMERICAN PERSONS,
19 HISPANIC AMERICAN PERSONS, NATIVE AMERICAN PERSONS, AND WHITE
20 WOMEN;

21 (e) AS DETAILED IN THE STATE DISPARITY STUDY REPORT, THE
22 RESULTS OF THE STUDY INDICATE THAT DISPARITIES BETWEEN
23 AVAILABILITY OF HISTORICALLY UNDERUTILIZED BUSINESSES AND
24 UTILIZATION OF SUCH BUSINESSES EXISTS IN STATE CONTRACTING;

25 (f) ALTHOUGH THE STATE IS ALREADY ENDEAVORING TO HELP
26 SMALL BUSINESSES OBTAIN STATE CONTRACTS, IT IS DOING SO WITH
27 LIMITED TOOLS AND RESOURCES;

28 (g) THE DISPARITIES IDENTIFIED IN THE STATE DISPARITY REPORT
29 ARE LIKELY TO PERSIST UNLESS FURTHER ACTION IS TAKEN; AND

30 (h) THE STATE DISPARITY STUDY REPORT RECOMMENDED THAT
31 THE GENERAL ASSEMBLY CONSIDER ENACTING LEGISLATION TO
32 AUTHORIZE AND FUND A PROCUREMENT EQUITY PROGRAM TO ADDRESS
33 THE SPECIFIC DISPARITIES SHOWN IN THE STATE DISPARITY STUDY REPORT
34 FOR HISTORICALLY UNDERUTILIZED BUSINESSES BASED ON INDUSTRY AND
35 BUSINESS OWNERSHIP.".

36 Page 10, after line 18 insert:

37 (1) "CONSTRUCTION-RELATED PROFESSIONAL SERVICES" MEANS
38 SERVICES WITH ARCHITECTURE AND ENGINEERING, SURVEYING, REAL
39 ESTATE CONSULTING, AND RELATED WORK.

40 (2) "DISPARITY" MEANS AN INEQUALITY, DIFFERENCE, OR GAP
41 BETWEEN AN ACTUAL OUTCOME AND A REFERENCE POINT OR BENCHMARK.

42 (3) "DISPARITY INDEX" MEANS A MEASURE OF THE RELATIVE

1 DIFFERENCE BETWEEN AN OUTCOME, SUCH AS PERCENTAGE OF CONTRACT
2 DOLLARS RECEIVED BY A GROUP, AND A CORRESPONDING BENCHMARK,
3 SUCH AS THE PERCENTAGE OF CONTRACT DOLLARS THAT MIGHT BE
4 EXPECTED GIVEN THE RELATIVE AVAILABILITY OF THAT GROUP FOR THOSE
5 CONTRACTS. IN THIS EXAMPLE, DISPARITY INDEX IS CALCULATED BY
6 DIVIDING A NUMERATOR OF PERCENT UTILIZATION BY A DENOMINATOR OF
7 PERCENT AVAILABILITY AND THEN MULTIPLYING THE RESULT BY 100. A
8 DISPARITY INDEX OF 100 INDICATES "PARITY" OR UTILIZATION "ON PAR"
9 WITH AVAILABILITY. DISPARITY INDEX FIGURES CLOSER TO 0 INDICATE
10 LARGER DISPARITIES BETWEEN UTILIZATION AND AVAILABILITY.".

11 Renumber succeeding subsections accordingly.

12 Page 10, line 20, strike "PROFIT-MAKING" and substitute "BUSINESS,
13 FOR-PROFIT".

14 Page 10, line 26, strike "GROUP" and substitute "GROUP; EXCEPT THAT A
15 BUSINESS OWNED BY ASIAN AMERICAN PERSONS IS A HISTORICALLY
16 UNDERUTILIZED BUSINESS ONLY WITH RESPECT TO STATE PROCUREMENT
17 FOR "OTHER PROFESSIONAL SERVICES CONTRACTS", AS THAT TERM IS
18 DEFINED IN THE STATE DISPARITY STUDY.".

19 Page 10, line 27, after "WOMEN;" insert "OR".

20 Page 11, line 1 strike "DISABILITIES; OR" and substitute "DISABILITIES;
21 AND".

22 Page 11, strike lines 2 and 3.

23 Page 11, after line 5 insert:

24 " (5) "INDUSTRY" MEANS BUSINESSES WITHIN ONE OF THE
25 FOLLOWING ECONOMIC SECTORS:

26 (a) CONSTRUCTION;
27 (b) CONSTRUCTION-RELATED PROFESSIONAL SERVICES;
28 (c) BROKERAGE AND INVESTMENT;
29 (d) OTHER PROFESSIONAL SERVICES; AND
30 (f) GOODS AND OTHER SERVICES.".

31 Renumber succeeding subsections accordingly.

32 Page 11, after line 16 insert:

33 " (9) "PRIME CONTRACT" MEANS A CONTRACT BETWEEN THE STATE
34 AND A BUSINESS.

1 (10) "PRIME CONTRACTOR" MEANS A CONSTRUCTION BUSINESS
2 THAT PERFORMS A PRIME CONTRACT FOR THE STATE.".

3 Renumber succeeding subsections accordingly.

4 Page 11, after line 21 insert:

5 "(13) "PROFESSIONAL SERVICES" MEANS TYPES OF WORK IN THE
6 SERVICE SECTOR REQUIRING SPECIAL TRAINING. SOME PROFESSIONAL
7 SERVICES SUCH AS ACCOUNTING AND LAW, REQUIRE HOLDING
8 PROFESSIONAL LICENSES.".

9 Renumber succeeding subsections accordingly.

10 Page 11, line 24, strike "MEANS:" and substitute "MEANS INDIVIDUALS
11 WHO BELONG TO ONE OR MORE RACIAL OR ETHNIC GROUPS IDENTIFIED IN
12 49 CFR SECTION 26.5:".

13 Page 12, after line 13 insert:

"(16) "REMEDIAL MEASURE" MEANS AN ACTION DESIGNED TO ADDRESS BARRIERS TO FULL PARTICIPATION OF A TARGETED GROUP.".

16 Renumber succeeding subsections accordingly.

17 Page 13, after line 13 insert:

18 " (23) "SUBSTANTIAL DISPARITY" MEANS A DISPARITY WHERE THE
19 DISPARITY INDEX IS LESS THAN 80, WHICH CAN INDICATE EVIDENCE OF
20 DISCRIMINATION AFFECTING THE OUTCOME.

24 (25) "WOMEN-OWNED BUSINESS" OR "WBE" MEANS A BUSINESS
25 THAT IS AT LEAST FIFTY-ONE PERCENT OWNED AND CONTROLLED BY ONE
26 OR MORE INDIVIDUALS THAT ARE NON-MINORITY WOMEN.".

27 Page 14, strike lines 7 through 16 and substitute:

32 Page 14, line 17, strike "PRELIMINARY".

33 Page 14, strike lines 19 through 25.

- 1 Reletter succeeding paragraphs accordingly.
- 2 Page 15, line 14, strike "SMALL" and substitute "HISTORICALLY
- 3 UNDERUTILIZED".
- 4 Page 15, strike lines 19 through 23 and substitute "OPPORTUNITY.".
- 5 Page 16, line 10, strike "IT IS NOT REQUIRED TO IMPLEMENT" and
- 6 substitute "ARE NOT REQUIRED TO BE IMPLEMENTED".
- 7 Page 16, strike lines 26 and 27.
- 8 Page 17, strike lines 1 through 8 and substitute:
9 "(a) THE STATE SEEKS RECOMMENDATIONS FROM STATE
10 PROCUREMENT STAKEHOLDERS, AS CONVENED PURSUANT TO SUBSECTION
11 (2) OF THIS SECTION FOR THE IMPLEMENTATION OF REMEDIAL MEASURES,
12 INCLUDING REMEDIAL MEASURES USING PROCUREMENT EQUITY TOOLS,
13 AND QUANTIFICATION OF THE AMOUNT OF ADDITIONAL FUNDING AND
14 PERSONNEL REQUIRED TO BOTH IMPLEMENT SPECIFIC REMEDIAL MEASURES
15 AND FULLY IMPLEMENT THE PROGRAM; AND".
16
- 17 Page 17, line 9, strike "ENSURE THAT" and substitute "SUPPORT".
- 18 Page 17, line 11, strike "IS ACHIEVED".
- 19 Page 17, line 14, strike "STAKEHOLDERS," and substitute "STAKEHOLDERS
20 AS CONVENED PURSUANT TO SUBSECTION (2) OF THIS SECTION,".
- 21 Page 17, line 15, strike "DEPARTMENT" and substitute "MINORITY
22 BUSINESS OFFICE".
- 23 Page 17, line 16, strike "ROBUST".
- 24 Page 17, line 18, strike "COMPRISED" and substitute "THAT MAY BE
25 COMPRISED, TO THE EXTENT PRACTICABLE,".
- 26 Page 17, line 22, after "BUSINESSES," insert "GOVERNMENTAL ENTITIES,
27 FEDERAL AND LOCAL ORGANIZATIONS THAT PROVIDE PROCUREMENT
28 TECHNICAL ASSISTANCE OR OUTREACH TO HISTORICALLY UNDERUTILIZED
29 BUSINESSES AND SMALL BUSINESSES,".
- 30 Page 17, line 24, strike "DEPARTMENT" and substitute "MINORITY
31 BUSINESS OFFICE".

- 1 Page 17, strike lines 26 and 27 and substitute:
 - 2 "(2) THE MINORITY BUSINESS OFFICE SHALL CONVENE AND
 - 3 ENGAGE IN CONSULTATION WITH A STAKEHOLDER GROUP, WHICH, TO THE
 - 4 EXTENT PRACTICABLE MAY CONSIST OF:".
- 5 Page 18, line 9, after "24-48.5-127;" add "AND".
- 6 Page 18, strike line 10.
- 7 Renumber succeeding subparagraph accordingly.
- 8 Page 18, line 24, strike "AN" and substitute "TO THE EXTENT
- 9 PRACTICABLE, AN".
- 10 Page 19, line 7, after "PERSONS;" add "AND".
- 11 Page 19, strike lines 10 through 12.
- 12 Page 19, lines 13, strike "AN" and substitute "TO THE EXTENT
- 13 PRACTICABLE, AN".
- 14 Page 19, line 21, strike "AND".
- 15 Page 19, after line 24 insert:
 - 16 "(IV) WITH CONSIDERATION FOR THE VOLUME OF CONSTRUCTION
 - 17 CONTRACTS AWARDED ANNUALLY BY THE STATE, A REPRESENTATIVE OF
 - 18 THE ASSOCIATED GENERAL CONTRACTORS; AND".
- 19 Page 20, line 1, strike "DEPARTMENT" and substitute "MINORITY BUSINESS
- 20 OFFICE".
- 21 Page 20, line 13, strike "POLICY RECOMMENDATIONS" and substitute
- 22 "FINDINGS, REMEDIAL MEASURES, AND RECOMMENDATIONS".
- 23 Page 20, line 15, strike "RECOMMENDATIONS IN" and substitute
- 24 "RECOMMENDATIONS OUTLINED IN".
- 25 Page 20, lines 16 and 17, strike "INCLUDE, WITH WRITTEN EXPLANATIONS,
- 26 POLICY RECOMMENDATIONS" and substitute "INCLUDE WRITTEN
- 27 EXPLANATIONS OF RECOMMENDATIONS".
- 28 Page 20, line 18, strike "IMPLEMENTED, AND".

1 Page 20, strike lines 19 through 24 and substitute: "IMPLEMENTED AND
2 THE REMEDIAL MEASURES THAT WILL BE TAKEN TO SUPPORT PROGRAM
3 IMPLEMENTATION IN A MANNER THAT IS SUFFICIENTLY COMPREHENSIVE
4 TO MEET THE STATE'S GOAL OF REDUCING DISPARITIES BETWEEN THE
5 AVAILABILITY OF HISTORICALLY UNDERUTILIZED BUSINESSES AND THEIR
6 UTILIZATION IN STATE PROCUREMENT AND INCREASING SUCH
7 UTILIZATION.".

8 Page 20, after line 24 insert:

9 **"(II) CONFIRMATION OR REFUTATION OF THE DISPARITY STUDY**
10 **REPORT FINDING OF NO SUBSTANTIAL DISPARITY BETWEEN AVAILABLE AND**
11 **UTILIZED LESBIAN, GAY, BISEXUAL, AND TRANSGENDER BUSINESSES;**

12 **(III) CONFIRMATION OR REFUTATION OF THE DISPARITY STUDY**
13 **REPORT FINDING OF NO SUBSTANTIAL DISPARITY BETWEEN AVAILABILITY**
14 **AND UTILIZATION OF BUSINESSES OWNED BY ASIAN AMERICAN PERSONS**
15 **FOR CONSTRUCTION, CONSTRUCTION-RELATED PROFESSIONAL SERVICES,**
16 **GOODS AND OTHER SERVICES CONTRACTS, BROKERAGE, AND**
17 **INVESTMENT;".**

18 Rerumber succeeding subparagraphs accordingly.

19 Page 20, line 19, strike "THE POLICY".

20 Page 21, strike line 1.

21 Page 21, line 2, strike "REQUIRED BY" and substitute "RECOMMENDATIONS
22 AND REMEDIAL MEASURES IN ACCORDANCE WITH".

23 Page 21, line 13, after "RECOMMENDATIONS" insert "AND ANY SUGGESTED
24 REMEDIAL MEASURES".

25 Page 21, line 14, "strike "PLANS AND RECOMMENDATIONS OF THE
26 DEPARTMENT" and substitute "PLANS, RECOMMENDATIONS, AND REMEDIAL
27 MEASURES THAT THE DEPARTMENT HAS TAKEN".

28 Page 21, line 17, strike "2023" and substitute "2024".

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