

**Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 14-0203.01 Nicole Myers x4326

**HOUSE BILL 14-1316**

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Business, Labor, Economic, & Workforce Development

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**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 AND REQUIRING THE DEPARTMENT OF**  
106             **PERSONNEL TO TRACK CONTRACTS AWARDED TO HISTORICALLY**  
107             **UNDERUTILIZED BUSINESSES.**

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**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 THE STATE PROCUREMENT PROCESS BE FREE FROM BIAS SO THAT ALL  
2 QUALIFIED PERSONS AND ENTITIES MAY COMPETE FOR STATE BUSINESS;

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

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

14 (d) THE UNITED STATES SUPREME COURT HAS RECOGNIZED THAT  
15 DISPARITY STUDIES ARE TOOLS THAT SEEK TO QUALIFY AND QUANTIFY  
16 PAST DISCRIMINATION AND RECOMMEND CERTAIN CORRECTIVE MEASURES  
17 AS MAY BE WARRANTED BY THE STUDY'S FINDINGS, AND, PURSUANT TO  
18 *CITY OF RICHMOND V. J. A. CROSON CO.*, 488 U.S. 469 (1989), THE COURT  
19 ESTABLISHED A REQUIREMENT THAT ANY SUCH DISPARITY STUDY BE  
20 CONDUCTED BY AN INDEPENDENT ENTITY;

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

25 (f) THEREFORE, IT IS THE INTENT OF THE GENERAL ASSEMBLY,  
26 CONSISTENT WITH THE CODE'S STATED POLICIES OF ENSURING THE FAIR  
27 AND EQUITABLE TREATMENT OF PERSONS WHO DEAL WITH THE

1       PROCUREMENT SYSTEM AND FOSTERING EFFECTIVE BROAD-BASED  
2       COMPETITION WITHIN THE FREE ENTERPRISE SYSTEM, THAT AN  
3       INDEPENDENT STUDY BE COMMISSIONED TO:

4               (I) DETERMINE THE FREQUENCY WITH WHICH STATE CONTRACTS  
5       ARE AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES AND THE  
6       MONETARY AMOUNTS OF SUCH AWARDS, COMPARED TO THE FREQUENCY  
7       AND SIZE OF CONTRACTS AWARDED TO OTHER BUSINESSES; AND

8               (II) TO THE EXTENT THAT THE STUDY ESTABLISHES THAT  
9       DISPARITIES ATTRIBUTABLE TO PAST OR PRESENT DISCRIMINATION EXIST  
10      OR INHERE IN THE STATE PROCUREMENT PROCESS, TO RECOMMEND  
11      REMEDIAL MEASURES TO ADDRESS THE EFFECTS OF THAT DISCRIMINATION.

12              **24-103-902. Definitions.** AS USED IN THIS PART 9, UNLESS THE  
13      CONTEXT OTHERWISE REQUIRES:

14              (1) "CONTRACT" HAS THE MEANING SET FORTH IN SECTION  
15      24-101-301 (4) AND INCLUDES PUBLIC-PRIVATE PARTNERSHIPS AND OTHER  
16      AGREEMENTS FOR PUBLIC-PRIVATE FINANCING.

17              (2) "CONTRACTOR" MEANS ANY PERSON WHO IS A PARTY TO A  
18      CONTRACT.

19              (3) "HISTORICALLY UNDERUTILIZED BUSINESS" MEANS A BUSINESS:

20              (a) THAT IS AT LEAST FIFTY-ONE PERCENT OWNED BY ONE OR MORE  
21      INDIVIDUALS WHO ARE:

22              (I) UNITED STATES CITIZENS OR PERMANENT RESIDENT ALIENS;  
23      AND

24              (II) ONE OR MORE OF THE FOLLOWING:

25              (A) MEMBERS OF A RACIAL OR ETHNIC MINORITY GROUP;

26              (B) NON-HISPANIC CAUCASIAN WOMEN;

27              (C) VETERANS OF THE UNITED STATES ARMED FORCES; OR

1 (D) PERSONS WITH PHYSICAL OR MENTAL DISABILITIES; AND  
2 (b) FOR WHICH THE MINORITY OWNERSHIP CONTROLS BOTH THE  
3 MANAGEMENT AND DAY-TO-DAY BUSINESS DECISIONS.  
4 (4) "PERSONS WITH PHYSICAL OR MENTAL DISABILITIES" MEANS  
5 PERSONS WHO:  
6 (a) HAVE IMPAIRMENTS THAT SUBSTANTIALLY LIMIT ONE OR MORE  
7 MAJOR LIFE ACTIVITIES;  
8 (b) ARE REGARDED GENERALLY BY THE COMMUNITY AS HAVING  
9 A DISABILITY; AND  
10 (c) WHOSE DISABILITIES SUBSTANTIALLY LIMIT THEIR ABILITIES TO  
11 ENGAGE IN COMPETITIVE BUSINESS.  
12 (5) "RACIAL OR ETHNIC MINORITY GROUP" MEANS:  
13 (a) AFRICAN AMERICAN PERSONS, MEANING INDIVIDUALS HAVING  
14 ORIGINS IN ANY OF THE BLACK RACIAL GROUPS OF AFRICA;  
15 (b) HISPANIC AMERICAN PERSONS, INCLUDING PERSONS OF  
16 MEXICAN, PUERTO RICAN, CUBAN, CENTRAL OR SOUTH AMERICAN, OR  
17 OTHER SPANISH OR PORTUGUESE CULTURE OR ORIGIN, REGARDLESS OF  
18 RACE;  
19 (c) ASIAN AMERICAN PERSONS, INCLUDING PERSONS WHOSE  
20 ORIGINS ARE FROM JAPAN, CHINA, TAIWAN, KOREA, VIETNAM, LAOS,  
21 CAMBODIA, THE PHILIPPINES, SAMOA, THE UNITED STATES TERRITORIES  
22 OF THE PACIFIC, OR THE NORTHERN MARIANA ISLANDS; OR PERSONS  
23 WHOSE ORIGINS ARE FROM SUBCONTINENT ASIA, INCLUDING PERSONS  
24 WHOSE ORIGINS ARE FROM INDIA, PAKISTAN, BANGLADESH, SRI LANKA,  
25 BHUTAN, OR NEPAL; OR  
26 (d) NATIVE AMERICAN PERSONS, INCLUDING PERSONS WHO ARE  
27 AMERICAN INDIANS, ESKIMOS, ALEUTS, OR HAWAIIANS OF POLYNESIAN

1 DESCENT.

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

4 **24-103-903. Disparity study - report.** (1) (a) THE EXECUTIVE  
5 DIRECTOR SHALL COMMISSION A STATE DISPARITY STUDY REGARDING THE  
6 PARTICIPATION OF HISTORICALLY UNDERUTILIZED BUSINESSES IN STATE  
7 CONTRACTS ENTERED INTO BY ALL PRINCIPAL DEPARTMENTS OF THE  
8 EXECUTIVE BRANCH OF STATE GOVERNMENT AS SPECIFIED IN SECTION  
9 24-1-110, INCLUDING ANY DIVISION, OFFICE, AGENCY, OR OTHER UNIT  
10 CREATED WITHIN A PRINCIPAL DEPARTMENT AND INCLUDING INSTITUTIONS  
11 OF HIGHER EDUCATION AND THE COLORADO COMMISSION ON HIGHER  
12 EDUCATION; EXCEPT THAT THE STUDY SHALL NOT INCLUDE THOSE  
13 ENTITIES THAT HAVE ELECTED TO BE EXEMPT FROM THE CODE PURSUANT  
14 TO SECTION 24-101-105 (1) (b). THE STUDY SHALL INCLUDE STATE  
15 CONTRACTS ENTERED INTO DURING THE 2009-10, 2010-11, 2011-12,  
16 2012-13, AND 2013-14 STATE FISCAL YEARS.

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

21 (II) THE ENTITIES SUBJECT TO THE STUDY PURSUANT TO  
22 PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL COOPERATE FULLY WITH  
23 THE INDEPENDENT CONTRACTOR ENGAGED TO CONDUCT THE STUDY.

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

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

1           (II) THE EXECUTIVE DIRECTOR, WHO SHALL TRANSMIT A COPY OF  
2 THE DISPARITY STUDY FINAL REPORT PRODUCED PURSUANT TO THIS  
3 SECTION TO THE DIRECTOR OF THE MINORITY BUSINESS OFFICE CREATED  
4 IN SECTION 24-49.5-102, WHICH SHALL POST THE REPORT ON THAT  
5 OFFICE'S OFFICIAL WEB SITE.

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

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

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

22           (A) CONSTRUCTION, INCLUDING NEW CONSTRUCTION,  
23 REMODELING, RENOVATION, MAINTENANCE, DEMOLITION AND REPAIR OF  
24 ANY PUBLIC STRUCTURE OR BUILDING, PIPELINE CONSTRUCTION, AND  
25 OTHER PUBLIC IMPROVEMENTS;

26           (B) ARCHITECTURE AND ENGINEERING, INCLUDING CONSTRUCTION  
27 MANAGEMENT, LANDSCAPE ARCHITECTURE, PLANNING, SURVEYING,

1 MAPPING SERVICES, AND DESIGN, BUILD, AND CONSTRUCTION SERVICES;

2 (C) PROFESSIONAL SERVICES, INCLUDING LEGAL SERVICES,  
3 ACCOUNTING, INFORMATION TECHNOLOGY SERVICES, MEDICAL SERVICES,  
4 TECHNICAL SERVICES, RESEARCH PLANNING, AND CONSULTING SERVICES;

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

7 (E) GOODS AND SERVICES THAT MAY BE PROVIDED OR PERFORMED  
8 WITHOUT PROFESSIONAL LICENSURE OR SPECIAL EDUCATION OR TRAINING,  
9 INCLUDING GOODS AND SERVICES RELATING TO MATERIALS, SUPPLIES,  
10 EQUIPMENT, MAINTENANCE, AND FOOD;

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

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

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

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

25 (II) A SUBCONTRACTOR UTILIZATION ANALYSIS THAT PRESENTS  
26 THE DISTRIBUTION OF SUBCONTRACTS BY THE INDUSTRIES DESCRIBED IN  
27 SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (2);



1 (III) A MARKET AREA ANALYSIS THAT PRESENTS THE LEGAL BASIS  
2 FOR THE GEOGRAPHICAL MARKET AREA DETERMINATION AND DEFINES THE  
3 STATE'S MARKET AREA;

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

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

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

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

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

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

1           (II) IF THE ANALYSIS SUPPORTS A FINDING THAT SUCH DISPARITY  
2 EXISTS, THE REPORT MUST INCLUDE RECOMMENDATIONS TO AMELIORATE  
3 THE DISPARITY, INCLUDING ANY STATUTORY CHANGES LIKELY TO CURE,  
4 MITIGATE, OR REDRESS SUCH DISPARITY. ANY PROPOSED REMEDIAL  
5 MEASURES MUST BE TAILORED TO ADDRESS DOCUMENTED STATISTICAL  
6 DISPARITIES IN PROCUREMENT POLICIES.

7           **24-103-904. Contract awards to historically underutilized**  
8 **businesses - tracking.** (1) THE EXECUTIVE DIRECTOR SHALL DEVELOP A  
9 METHOD TO TRACK THE NUMBER AND PERCENTAGE OF ALL CONTRACTS  
10 ENTERED INTO BY ALL PRINCIPAL DEPARTMENTS OF THE EXECUTIVE  
11 BRANCH OF STATE GOVERNMENT AS SPECIFIED IN SECTION 24-1-110,  
12 INCLUDING ANY DIVISION, OFFICE, AGENCY, OTHER UNIT CREATED WITHIN  
13 A PRINCIPAL DEPARTMENT, INSTITUTIONS OF HIGHER EDUCATION, AND THE  
14 COLORADO COMMISSION ON HIGHER EDUCATION, THAT ARE AWARDED  
15 DURING ANY CALENDAR YEAR TO A HISTORICALLY UNDERUTILIZED  
16 BUSINESS. THE EXECUTIVE DIRECTOR IS NOT REQUIRED TO TRACK  
17 CONTRACTS AWARDED BY ENTITIES THAT HAVE ELECTED TO BE EXEMPT  
18 FROM THE CODE PURSUANT TO SECTION 24-101-105 (1) (b).

19           (2) TO ALLOW THE EXECUTIVE DIRECTOR TO TRACK CONTRACTS AS  
20 REQUIRED BY SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT OF  
21 PERSONNEL MAY REQUIRE VENDORS TO IDENTIFY SUBCONTRACTORS AND  
22 INDIRECT SPENDING UPON REQUEST BY THE DEPARTMENT.

23           (3) THE EXECUTIVE DIRECTOR SHALL ENSURE THAT DATA  
24 REGARDING THE OWNERSHIP OF THE HISTORICALLY UNDERUTILIZED  
25 BUSINESS IS AVAILABLE AND SHALL MAKE THE DATA FROM SUCH  
26 TRACKING AVAILABLE ON THE DEPARTMENT OF PERSONNEL'S WEB SITE.

27           (4) THE EXECUTIVE DIRECTOR SHALL BEGIN TRACKING CONTRACTS

1 AS REQUIRED BY SUBSECTION (1) OF THIS SECTION FOR NEW CONTRACTS  
2 FOR WHICH THE INVITATION FOR BIDS OR THE REQUEST FOR PROPOSALS  
3 WAS ISSUED ON OR AFTER JANUARY 1, 2015.

4 **24-103-905. Requests for information - disparity study.** THE  
5 EXECUTIVE DIRECTOR OR THE ENTITY THAT THE EXECUTIVE DIRECTOR  
6 COMMISSIONS TO CONDUCT A DISPARITY STUDY PURSUANT TO SECTION  
7 24-103-903 MAY REQUEST INFORMATION IN FURTHERANCE OF THE  
8 DISPARITY STUDY FROM EACH ENTITY THAT IS SUBJECT TO THE STUDY,  
9 INCLUDING EACH PRINCIPLE DEPARTMENT OF THE EXECUTIVE BRANCH OF  
10 STATE GOVERNMENT AS SPECIFIED IN SECTION 24-1-110, INCLUDING ANY  
11 DIVISION, OFFICE, AGENCY, OR OTHER UNIT CREATED WITHIN A PRINCIPLE  
12 DEPARTMENT, AND INCLUDING INSTITUTIONS OF HIGHER EDUCATION AND  
13 THE COLORADO COMMISSION ON HIGHER EDUCATION; EXCEPT THAT SUCH  
14 REQUESTS MAY NOT BE MADE OF ENTITIES THAT HAVE ELECTED TO BE  
15 EXEMPT FROM THE CODE PURSUANT TO SECTION 24-101-105 (1) (b). EACH  
16 ENTITY THAT IS SUBJECT TO THE DISPARITY STUDY SHALL RESPOND TO ANY  
17 SUCH REQUEST FOR INFORMATION IN FURTHERANCE OF THE DISPARITY  
18 STUDY AS SOON AS PRACTICABLE AFTER RECEIVING THE REQUEST.

19 **SECTION 2. Effective date.** This act takes effect July 1, 2014.

20 **SECTION 3. Safety clause.** The general assembly hereby finds,  
21 determines, and declares that this act is necessary for the immediate  
22 preservation of the public peace, health, and safety.