

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

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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Senate Committees

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 AND REDUCING**
108 **APPROPRIATIONS.**

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

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.

HOUSE
3rd Reading Unamended
April 7, 2014

HOUSE
Amended 2nd Reading
April 4, 2014

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; ■

1 (D) PERSONS WITH PHYSICAL OR MENTAL DISABILITIES; OR

2 (E) MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND
3 TRANSGENDER COMMUNITY; AND

4 (b) FOR WHICH THE MINORITY OWNERSHIP CONTROLS BOTH THE
5 MANAGEMENT AND DAY-TO-DAY BUSINESS DECISIONS.

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

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

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

12 (c) WHOSE DISABILITIES SUBSTANTIALLY LIMIT THEIR ABILITIES TO
13 ENGAGE IN COMPETITIVE BUSINESS.

14 (5) "RACIAL OR ETHNIC MINORITY GROUP" MEANS:

15 (a) AFRICAN AMERICAN PERSONS, MEANING INDIVIDUALS HAVING
16 ORIGINS IN ANY OF THE BLACK RACIAL GROUPS OF AFRICA;

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

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

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

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

6 **24-103-903. Disparity study - report.** (1) (a) THE EXECUTIVE
7 DIRECTOR SHALL COMMISSION A STATE DISPARITY STUDY REGARDING THE
8 PARTICIPATION OF HISTORICALLY UNDERUTILIZED BUSINESSES IN STATE
9 CONTRACTS ENTERED INTO BY ALL PRINCIPAL DEPARTMENTS OF THE
10 EXECUTIVE BRANCH OF STATE GOVERNMENT AS SPECIFIED IN SECTION
11 24-1-110, INCLUDING ANY DIVISION, OFFICE, AGENCY, OR OTHER UNIT
12 CREATED WITHIN A PRINCIPAL DEPARTMENT AND INCLUDING INSTITUTIONS
13 OF HIGHER EDUCATION AND THE COLORADO COMMISSION ON HIGHER
14 EDUCATION; EXCEPT THAT THE STUDY SHALL NOT INCLUDE THOSE
15 ENTITIES THAT HAVE ELECTED TO BE EXEMPT FROM THE CODE PURSUANT
16 TO SECTION 24-101-105 (1) (b). THE STUDY SHALL INCLUDE STATE
17 CONTRACTS ENTERED INTO DURING THE 2009-10, 2010-11, 2011-12,
18 2012-13, AND 2013-14 STATE FISCAL YEARS.

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

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

26 (c) THE STUDY AND FINAL REPORT SETTING FORTH THE STUDY'S
27 METHODOLOGIES, FINDINGS, AND RECOMMENDATIONS MUST BE PROVIDED

1 BY DECEMBER 1, 2015, TO:

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

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

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

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

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

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

1 (B) ARCHITECTURE AND ENGINEERING, INCLUDING CONSTRUCTION
2 MANAGEMENT, LANDSCAPE ARCHITECTURE, PLANNING, SURVEYING,
3 MAPPING SERVICES, AND DESIGN, BUILD, AND CONSTRUCTION SERVICES;

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

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

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

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

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

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

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

27 (II) A SUBCONTRACTOR UTILIZATION ANALYSIS THAT PRESENTS

1 THE DISTRIBUTION OF SUBCONTRACTS BY THE INDUSTRIES DESCRIBED IN
2 SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (2);

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

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

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

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

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

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

25 (c) (I) ANY CONCLUSION THAT DISCRIMINATION-RELATED
26 DISPARITY EXISTS BETWEEN THE AVAILABILITY AND UTILIZATION OF
27 HISTORICALLY UNDERUTILIZED BUSINESSES MUST BE SUPPORTED BY

1 STATISTICAL EVIDENCE AND MAY BE SUPPLEMENTED OR SUPPORTED BY
2 ANECDOTAL EVIDENCE.

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

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

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

25 (3) THE EXECUTIVE DIRECTOR SHALL ENSURE THAT DATA
26 REGARDING THE OWNERSHIP OF THE HISTORICALLY UNDERUTILIZED
27 BUSINESS IS AVAILABLE AND SHALL MAKE THE DATA FROM SUCH

1 TRACKING AVAILABLE ON THE DEPARTMENT OF PERSONNEL'S WEB SITE.

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

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

21 **SECTION 2. Appropriation - adjustments to 2014 long bill.**

22 (1) For the implementation of this act, the general fund appropriation
23 made in the annual general appropriation act to the controlled
24 maintenance trust fund created in section 24-75-302.5 (2) (a), Colorado
25 Revised Statutes, for the fiscal year beginning July 1, 2014, is decreased
26 by \$684,420.

27 (2) In addition to any other appropriation, there is hereby

1 appropriated, out of any moneys in the general fund, not otherwise
2 appropriated, to the department of personnel, for the fiscal year beginning
3 July 1, 2014, the sum of \$684,420 and 0.5 FTE, or so much thereof as
4 may be necessary, to be allocated to the division of accounts and control
5 – controller, state purchasing office, for the implementation of this act as
6 follows:

7 (a) \$29,242 and 0.5 FTE for personal services;

8 (b) \$5,178 for operating expenses; and

9 (c) \$650,000 for vendor contract expenses.

10 **SECTION 3. Effective date.** This act takes effect July 1, 2014.

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