

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 14-0203.01 Nicole Myers x4326

**HOUSE BILL 14-1316**

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**HOUSE SPONSORSHIP**

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**SENATE SPONSORSHIP**

**Ulibarri and Guzman**,

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**House Committees**

Business, Labor, Economic, & Workforce Development

Appropriations

**Senate Committees**

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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; ■

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

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