

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 15-0393.01 Nicole Myers x4326

HOUSE BILL 15-1306

HOUSE SPONSORSHIP

Williams and Salazar, Arndt, Becker K., Buckner, Duran, Esgar, Kagan, Kraft-Tharp, Lontine, Melton, Mitsch Bush, Moreno, Pettersen, Primavera, Ryden, Vigil

SENATE SPONSORSHIP

Crowder and Guzman,

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE BUSINESS OPPORTUNITY STUDY.**

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://www.leg.state.co.us/billsummaries>.)

In order to ascertain whether disparity exists between the participation of historically underutilized businesses and other businesses in the state procurement system, the bill directs the department of personnel to contract for a disparity study of the Colorado procurement process and to make recommendations to ameliorate any discrepancies identified by the study.

The final report that includes the findings and recommendations from the study must be provided to the members of the general assembly

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.*

and the executive director of the department of personnel (executive director) no later than January 1, 2017. The bill directs the executive director to transmit a copy of the final report to the minority business office, which shall post the report on its official web site. In addition, the executive director is required to include the findings and recommendations from the study in the report to the applicable house and senate committees of reference during its hearing pursuant to the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act".

The executive director is required to develop a method to track the number and percentage of all contracts entered into by state governmental bodies subject to the study that are awarded during any calendar year to a historically underutilized business. The executive director is also required to make such information available on the department of personnel's web site.

Any entity that is subject to the disparity study is required to respond to a request for information in connection with the study as soon as possible after receiving the request.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 9 to article
3 103 of title 24 as follows:

4 **PART 9**

5 **PROCUREMENT DISPARITY STUDY**

6 **24-103-901. Legislative declaration.** (1) THE GENERAL
7 ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

8 (a) BUSINESSES OWNED BY MINORITIES AND WOMEN ARE AMONG
9 THE FASTEST GROWING IN THE STATE, BUT ARE HISTORICALLY
10 UNDERUTILIZED IN GOVERNMENT CONTRACTS;

11 (b) SECURING GOVERNMENT PROCUREMENT CONTRACTS IS A
12 MAJOR DETERMINANT IN THE SUCCESS OF BUSINESSES OWNED BY
13 MINORITIES AND WOMEN;

14 (c) THE OWNERS OF HISTORICALLY UNDERUTILIZED BUSINESSES
15 WILL BENEFIT FROM EQUITY AND FAIRNESS IN THE STATE PROCUREMENT

1 SYSTEM;

2 (d) IT IS IMPERATIVE TO THE PUBLIC POLICY OF COLORADO THAT
3 THE STATE PROCUREMENT PROCESS BE FREE FROM BIAS SO THAT ALL
4 QUALIFIED PERSONS AND ENTITIES MAY COMPETE FOR STATE BUSINESS;

5 (e) THE STATE HAS AN ECONOMIC INTEREST IN ENSURING THAT
6 HISTORICALLY UNDERUTILIZED BUSINESSES PARTICIPATE FAIRLY IN
7 ECONOMIC OPPORTUNITIES CREATED BY STATE PROCUREMENT;

8 (f) A FAIR PROCUREMENT PROCESS NOT ONLY ENSURES JUSTICE
9 AND FAIRNESS IN STATE CONTRACTING BUT BROADENS THE PROCUREMENT
10 CONTRACTOR POOL, WHICH RESULTS IN EFFICIENCIES STATEWIDE AND, AS
11 WARRANTED, PROMOTES THE GROWTH OF HISTORICALLY UNDERUTILIZED
12 BUSINESSES, THEREBY CREATING JOBS AND STIMULATING THE STATE'S
13 ECONOMY;

14 (g) ALTHOUGH STUDIES ESTABLISHING ADVERSE IMPACTS IN
15 PROCUREMENT FOR CERTAIN INDUSTRIES OR IN CERTAIN LOCALITIES HAVE
16 BEEN CONDUCTED, A COMPREHENSIVE ANALYSIS OF STATE CONTRACTS
17 AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES HAS NOT YET
18 BEEN COMMISSIONED;

19 (h) THE UNITED STATES SUPREME COURT HAS RECOGNIZED THAT
20 DISPARITY STUDIES ARE TOOLS THAT SEEK TO QUALIFY AND QUANTIFY
21 PAST ADVERSE IMPACTS IN THE PROCUREMENT PROCESS AND RECOMMEND
22 CERTAIN CORRECTIVE MEASURES AS MAY BE WARRANTED BY THE STUDY'S
23 FINDINGS, AND, PURSUANT TO *CITY OF RICHMOND V. J. A. CROSON Co.*, 488
24 U.S. 469 (1989), THE COURT ESTABLISHED A REQUIREMENT THAT ANY
25 SUCH STUDY BE CONDUCTED BY AN INDEPENDENT ENTITY; AND

26 (i) IF DISPARITY DOES EXIST, SUCH A STUDY IS ESSENTIAL TO THE
27 ULTIMATE ACHIEVEMENT OF A MARKETPLACE IN WHICH HISTORICALLY

1 UNDERUTILIZED BUSINESSES ARE TREATED EQUITABLY AND CAN OBTAIN
2 A FAIR MARKET SHARE OF CONTRACT EXPENDITURES.

3 (2) THEREFORE, IT IS THE INTENT OF THE GENERAL ASSEMBLY,
4 CONSISTENT WITH THE CODE'S STATED POLICIES OF ENSURING THE FAIR
5 AND EQUITABLE TREATMENT OF PERSONS WHO DEAL WITH THE
6 PROCUREMENT SYSTEM AND FOSTERING EFFECTIVE BROAD-BASED
7 COMPETITION WITHIN THE FREE ENTERPRISE SYSTEM, THAT AN
8 INDEPENDENT STUDY BE COMMISSIONED TO:

9 (a) DETERMINE THE FREQUENCY WITH WHICH STATE CONTRACTS
10 ARE AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES AND THE
11 MONETARY AMOUNTS OF SUCH AWARDS, COMPARED TO THE FREQUENCY
12 AND SIZE OF CONTRACTS AWARDED TO OTHER BUSINESSES; AND

13 (b) RECOMMEND REMEDIAL MEASURES TO ADDRESS THE
14 RESULTING ADVERSE IMPACTS OF THE DISPARITY, TO THE EXTENT THAT
15 THE STUDY ESTABLISHES THAT DISPARITY ATTRIBUTABLE TO PAST OR
16 PRESENT UNFAIRNESS IN STATE CONTRACT AWARDS EXISTS OR INHERES IN
17 THE STATE PROCUREMENT PROCESS.

18 **24-103-902. Definitions.** AS USED IN THIS PART 9, UNLESS THE
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "CONTRACT" HAS THE MEANING AS SET FORTH IN SECTION
21 24-101-301 (4) AND INCLUDES PUBLIC-PRIVATE PARTNERSHIPS AND OTHER
22 AGREEMENTS FOR PUBLIC-PRIVATE FINANCING.

23 (2) "CONTRACTOR" MEANS ANY PERSON HAVING A CONTRACT
24 WITH A GOVERNMENTAL BODY.

25 (3) "HISTORICALLY UNDERUTILIZED BUSINESS" MEANS A
26 HISTORICALLY UNDERUTILIZED BUSINESS AS DEFINED IN SECTION
27 24-49.5-105. FOR PURPOSES OF THIS PART 9, A HISTORICALLY

1 UNDERUTILIZED BUSINESS ALSO INCLUDES A BUSINESS THAT IS OWNED, IN
2 ACCORDANCE WITH THE CRITERIA IN SECTION 24-49.5-105, BY A VETERAN
3 OF THE UNITED STATES ARMED FORCES OR A PERSON WITH A PHYSICAL OR
4 MENTAL DISABILITY.

5 (4) "PERSON WITH A PHYSICAL OR MENTAL DISABILITY" MEANS A
6 PERSON WHO:

7 (a) HAS AN IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR
8 MORE MAJOR LIFE ACTIVITIES;

9 (b) IS REGARDED GENERALLY BY THE COMMUNITY AS HAVING A
10 DISABILITY; AND

11 (c) WHOSE DISABILITY SUBSTANTIALLY LIMITS HIS OR HER ABILITY
12 TO ENGAGE IN COMPETITIVE BUSINESS.

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

15 **24-103-903. Disparity study - report.** (1) (a) THE EXECUTIVE
16 DIRECTOR SHALL COMMISSION A STATE DISPARITY STUDY REGARDING THE
17 PARTICIPATION OF HISTORICALLY UNDERUTILIZED BUSINESSES IN STATE
18 CONTRACTS ENTERED INTO BY EACH GOVERNMENTAL BODY, INCLUDING
19 INSTITUTIONS OF HIGHER EDUCATION AND THE COLORADO COMMISSION
20 ON HIGHER EDUCATION; EXCEPT THAT THE STUDY SHALL NOT INCLUDE
21 THOSE ENTITIES THAT HAVE ELECTED TO BE EXEMPT FROM THE CODE
22 PURSUANT TO SECTION 24-101-105 (1) (b). THE STUDY SHALL INCLUDE
23 STATE CONTRACTS ENTERED INTO DURING THE 2011-12, 2012-13,
24 2013-14, AND 2014-15 STATE FISCAL YEARS.

25 (b) (I) THE STUDY MUST BE CONDUCTED, AND A FINAL REPORT
26 PREPARED, BY AN ENTITY INDEPENDENT OF THE DEPARTMENT THAT IS
27 SELECTED IN RESPONSE TO A REQUEST FOR PROPOSAL ISSUED IN

1 ACCORDANCE WITH SECTION 24-103-203.

2 (II) THE GOVERNMENTAL BODIES SUBJECT TO THE STUDY
3 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL COOPERATE
4 FULLY WITH THE INDEPENDENT CONTRACTOR ENGAGED TO CONDUCT THE
5 STUDY.

6 (c) THE STUDY AND FINAL REPORT SETTING FORTH THE STUDY'S
7 METHODOLOGIES, FINDINGS, AND RECOMMENDATIONS MUST BE PROVIDED
8 BY JANUARY 1, 2017, TO:

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

10 (II) THE EXECUTIVE DIRECTOR, WHO SHALL TRANSMIT A COPY OF
11 THE STUDY AND FINAL REPORT PRODUCED PURSUANT TO THIS SECTION TO
12 THE DIRECTOR OF THE MINORITY BUSINESS OFFICE CREATED IN SECTION
13 24-49.5-102, WHICH SHALL POST THE REPORT ON THAT OFFICE'S OFFICIAL
14 WEB SITE.

15 (d) THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
16 DESIGNEE SHALL INCLUDE THE FINDINGS AND RECOMMENDATIONS FROM
17 THE FINAL REPORT REQUIRED BY PARAGRAPH (c) OF THIS SUBSECTION (1)
18 IN THE DEPARTMENT'S REPORT TO THE APPLICABLE HOUSE AND SENATE
19 COMMITTEES OF REFERENCE REQUIRED BY THE "STATE MEASUREMENT
20 FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART)
21 GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2, C.R.S.

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

24 (I) TO DETERMINE WHETHER THERE IS A DISPARITY BETWEEN THE
25 NUMBER OF QUALIFIED HISTORICALLY UNDERUTILIZED BUSINESSES THAT
26 ARE READY, WILLING, AND ABLE TO PERFORM STATE CONTRACTS FOR
27 GOODS AND SERVICES, AND THE NUMBER OF SUCH CONTRACTORS

1 ACTUALLY ENGAGED TO PERFORM SUCH CONTRACTS, WHICH INFORMATION
2 MUST BE ASCERTAINED BY EVALUATING THE PAYMENTS MADE UNDER
3 CONTRACTS AND SUBCONTRACTS AWARDED IN THE FOLLOWING
4 INDUSTRIES:

5 (A) CONSTRUCTION, INCLUDING NEW CONSTRUCTION,
6 REMODELING, RENOVATION, MAINTENANCE, DEMOLITION AND REPAIR OF
7 ANY PUBLIC STRUCTURE OR BUILDING, PIPELINE CONSTRUCTION, AND
8 OTHER PUBLIC IMPROVEMENTS;

9 (B) ARCHITECTURE AND ENGINEERING, INCLUDING CONSTRUCTION
10 MANAGEMENT, LANDSCAPE ARCHITECTURE, PLANNING, SURVEYING,
11 MAPPING SERVICES, AND DESIGN, BUILD, AND CONSTRUCTION SERVICES;

12 (C) PROFESSIONAL SERVICES, INCLUDING LEGAL SERVICES,
13 ACCOUNTING, INFORMATION TECHNOLOGY SERVICES, MEDICAL SERVICES,
14 TECHNICAL SERVICES, RESEARCH PLANNING, AND CONSULTING SERVICES;

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

17 (E) GOODS AND SERVICES THAT MAY BE PROVIDED OR PERFORMED
18 WITHOUT PROFESSIONAL LICENSURE OR SPECIAL EDUCATION OR TRAINING,
19 INCLUDING GOODS AND SERVICES RELATING TO MATERIALS, SUPPLIES,
20 EQUIPMENT, MAINTENANCE, AND FOOD;

21 (II) TO DETERMINE WHETHER, OF THE TOTAL AMOUNT SPENT ON
22 STATE CONTRACTS IN A FISCAL YEAR, THERE IS A DISPARITY BETWEEN THE
23 PERCENTAGE OF SPENDING ATTRIBUTABLE TO CONTRACTS AWARDED TO
24 QUALIFIED HISTORICALLY UNDERUTILIZED BUSINESSES AND THE
25 PERCENTAGE OF STATE CONTRACTS THAT WERE AWARDED TO
26 HISTORICALLY UNDERUTILIZED BUSINESSES IN THAT FISCAL YEAR; AND

27 (III) TO DETERMINE WHAT CHANGES, IF ANY, SHOULD BE MADE TO

1 STATE POLICIES AFFECTING HISTORICALLY UNDERUTILIZED BUSINESSES.

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

6 (I) A CONTRACTOR UTILIZATION ANALYSIS THAT PRESENTS THE
7 DISTRIBUTION OF CONTRACTS BY INDUSTRY;

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

11 (III) A MARKET AREA ANALYSIS THAT PRESENTS THE LEGAL BASIS
12 FOR THE GEOGRAPHICAL MARKET AREA DETERMINATION AND DEFINES THE
13 STATE'S MARKET AREA;

14 (IV) A CONTRACTOR AND SUBCONTRACTOR AVAILABILITY
15 ANALYSIS THAT PRESENTS THE DISTRIBUTION OF AVAILABLE BUSINESSES
16 IN THE STATE'S MARKET AREA;

17 (V) A CONTRACTOR DISPARITY ANALYSIS THAT PRESENTS
18 CONTRACTOR UTILIZATION COMPARED TO CONTRACTOR AVAILABILITY BY
19 INDUSTRY AND DETERMINES WHETHER THE COMPARISON IS STATISTICALLY
20 SIGNIFICANT;

21 (VI) A SUBCONTRACTOR DISPARITY ANALYSIS THAT PRESENTS
22 SUBCONTRACTOR UTILIZATION COMPARED TO SUBCONTRACTOR
23 AVAILABILITY BY INDUSTRY AND DETERMINES WHETHER THE COMPARISON
24 IS STATISTICALLY SIGNIFICANT; AND

25 (VII) A QUALITATIVE ANALYSIS THAT PRESENTS THE BUSINESS
26 COMMUNITY'S EXPERIENCES AND PERCEPTIONS OF BARRIERS
27 ENCOUNTERED IN CONTRACTING OR ATTEMPTING TO CONTRACT WITH THE

1 STATE.

2 (c) THE DISPARITY STUDY MUST INCLUDE RECOMMENDATIONS
3 REGARDING BEST MANAGEMENT PRACTICES AND WAYS TO ENHANCE
4 COLORADO'S CONTRACTING AND PROCUREMENT ACTIVITIES WITH
5 HISTORICALLY UNDERUTILIZED BUSINESSES.

6 (d) (I) ANY CONCLUSION THAT A DISPARITY EXISTS IN THE
7 AVAILABILITY AND UTILIZATION OF HISTORICALLY UNDERUTILIZED
8 BUSINESSES DUE TO THE ADVERSE IMPACTS OF THE CONTRACT AWARDS
9 PROCESS MUST BE SUPPORTED BY STATISTICAL EVIDENCE AND MAY BE
10 SUPPLEMENTED OR SUPPORTED BY ANECDOTAL EVIDENCE.

11 (II) IF THE ANALYSIS SUPPORTS A FINDING THAT SUCH DISPARITY
12 EXISTS, THE REPORT MUST INCLUDE RECOMMENDATIONS TO AMELIORATE
13 THE DISPARITY, INCLUDING ANY PROPOSED STATUTORY CHANGES TO CURE,
14 MITIGATE, OR REDRESS SUCH DISPARITY. ANY PROPOSED REMEDIAL
15 MEASURES MUST BE TAILORED TO ADDRESS DOCUMENTED STATISTICAL
16 DISPARITIES IN PROCUREMENT POLICIES.

17 **24-103-904. Contract awards to historically underutilized**
18 **businesses - tracking.** (1) THE EXECUTIVE DIRECTOR SHALL DEVELOP A
19 METHOD TO TRACK THE NUMBER AND PERCENTAGE OF, AND PAYMENT
20 DATA FOR, ALL CONTRACTS ENTERED INTO BY EACH GOVERNMENTAL
21 BODY SUBJECT TO THE STUDY PURSUANT TO SECTION 24-103-903 (1) (a),
22 THAT ARE AWARDED DURING ANY CALENDAR YEAR TO A HISTORICALLY
23 UNDERUTILIZED BUSINESS.

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

1 (3) THE EXECUTIVE DIRECTOR SHALL ENSURE THAT DATA
2 REGARDING THE OWNERSHIP OF THE HISTORICALLY UNDERUTILIZED
3 BUSINESS IS AVAILABLE AND SHALL MAKE THE DATA FROM SUCH
4 TRACKING AVAILABLE ON THE DEPARTMENT'S WEB SITE.

5 (4) THE EXECUTIVE DIRECTOR SHALL BEGIN TRACKING CONTRACTS
6 AS REQUIRED BY SUBSECTION (1) OF THIS SECTION FOR NEW CONTRACTS,
7 INCLUDING CONTRACTS THAT ARE AWARDED TO A BUSINESS OWNED BY A
8 MEMBER OF THE LESBIAN, GAY, BISEXUAL, OR TRANSGENDER COMMUNITY,
9 FOR WHICH THE INVITATION FOR BIDS OR THE REQUEST FOR PROPOSALS IS
10 ISSUED ON OR AFTER JANUARY 1, 2016.

11 **24-103-905. Requests for information - disparity study.** THE
12 EXECUTIVE DIRECTOR OR THE ENTITY THAT THE EXECUTIVE DIRECTOR
13 COMMISSIONS TO CONDUCT A DISPARITY STUDY PURSUANT TO SECTION
14 24-103-903 MAY REQUEST INFORMATION IN FURTHERANCE OF THE
15 DISPARITY STUDY FROM EACH GOVERNMENTAL BODY THAT IS SUBJECT TO
16 THE STUDY PURSUANT TO SECTION 24-103-903 (1) (a). EACH ENTITY THAT
17 IS SUBJECT TO THE DISPARITY STUDY SHALL RESPOND TO ANY SUCH
18 REQUEST FOR INFORMATION IN FURTHERANCE OF THE STUDY AS SOON AS
19 PRACTICABLE AFTER RECEIVING THE REQUEST.

20 **SECTION 2. Effective date.** This act takes effect July 1, 2015.

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