

First Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

**REENGROSSED**

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

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, AND, IN**  
102 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

**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.

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 27, 2015

HOUSE  
Amended 2nd Reading  
April 23, 2015

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

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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

1 WILL BENEFIT FROM EQUITY AND FAIRNESS IN THE STATE PROCUREMENT  
2 SYSTEM;

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

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

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

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

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

27 (i) IF DISPARITY DOES EXIST, SUCH A STUDY IS ESSENTIAL TO THE

1 ULTIMATE ACHIEVEMENT OF A MARKETPLACE IN WHICH HISTORICALLY  
2 UNDERUTILIZED BUSINESSES ARE TREATED EQUITABLY AND CAN OBTAIN  
3 A FAIR MARKET SHARE OF CONTRACT EXPENDITURES.

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

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

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

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

21 (1) "CONTRACT" HAS THE MEANING AS SET FORTH IN SECTION  
22 24-101-301 (4) AND INCLUDES PUBLIC-PRIVATE PARTNERSHIPS AND OTHER  
23 AGREEMENTS FOR PUBLIC-PRIVATE FINANCING; EXCEPT THAT, FOR THE  
24 PURPOSE OF THIS PART 9, A PURCHASE ORDER IS NOT A CONTRACT.

25 (2) "CONTRACTOR" MEANS ANY PERSON HAVING A CONTRACT  
26 WITH A GOVERNMENTAL BODY.

27 (3) "HISTORICALLY UNDERUTILIZED BUSINESS" MEANS A

1 HISTORICALLY UNDERUTILIZED BUSINESS AS DEFINED IN SECTION  
2 24-49.5-105. FOR PURPOSES OF THIS PART 9, A HISTORICALLY  
3 UNDERUTILIZED BUSINESS ALSO INCLUDES A BUSINESS THAT IS OWNED, IN  
4 ACCORDANCE WITH THE CRITERIA IN SECTION 24-49.5-105, BY A VETERAN  
5 OF THE UNITED STATES ARMED FORCES OR A PERSON WITH A PHYSICAL OR  
6 MENTAL DISABILITY.

7 (4) "PERSON WITH A PHYSICAL OR MENTAL DISABILITY" MEANS A  
8 PERSON WHO:

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

11 (b) IS REGARDED GENERALLY BY THE COMMUNITY AS HAVING A  
12 DISABILITY; AND

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

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

17 **24-103-903. Disparity study - report.** (1) (a) THE EXECUTIVE  
18 DIRECTOR SHALL COMMISSION A STATE DISPARITY STUDY REGARDING THE  
19 PARTICIPATION OF HISTORICALLY UNDERUTILIZED BUSINESSES IN STATE  
20 CONTRACTS ENTERED INTO BY EACH GOVERNMENTAL BODY, INCLUDING  
21 INSTITUTIONS OF HIGHER EDUCATION AND THE COLORADO COMMISSION  
22 ON HIGHER EDUCATION; EXCEPT THAT THE STUDY SHALL NOT INCLUDE  
23 THOSE ENTITIES THAT HAVE ELECTED TO BE EXEMPT FROM THE CODE  
24 PURSUANT TO SECTION 24-101-105 (1) (b). THE STUDY SHALL INCLUDE  
25 STATE CONTRACTS ENTERED INTO DURING THE 2011-12, 2012-13,  
26 2013-14, AND 2014-15 STATE FISCAL YEARS.

27 (b) (I) THE STUDY MUST BE CONDUCTED, AND A FINAL REPORT

1 PREPARED, BY AN ENTITY INDEPENDENT OF THE DEPARTMENT THAT IS  
2 SELECTED IN RESPONSE TO A REQUEST FOR PROPOSAL ISSUED IN  
3 ACCORDANCE WITH SECTION 24-103-203.

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

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

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

12 (II) THE EXECUTIVE DIRECTOR, WHO SHALL TRANSMIT A COPY OF  
13 THE STUDY AND FINAL REPORT PRODUCED PURSUANT TO THIS SECTION TO  
14 THE DIRECTOR OF THE MINORITY BUSINESS OFFICE CREATED IN SECTION  
15 24-49.5-102, WHICH SHALL POST THE REPORT ON THAT OFFICE'S OFFICIAL  
16 WEB SITE.

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

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

26 (I) TO DETERMINE WHETHER THERE IS A DISPARITY BETWEEN THE  
27 NUMBER OF QUALIFIED HISTORICALLY UNDERUTILIZED BUSINESSES THAT

1 ARE READY, WILLING, AND ABLE TO PERFORM STATE CONTRACTS FOR  
2 GOODS AND SERVICES, AND THE NUMBER OF SUCH CONTRACTORS  
3 ACTUALLY ENGAGED TO PERFORM SUCH CONTRACTS, WHICH INFORMATION  
4 MUST BE ASCERTAINED BY EVALUATING THE PAYMENTS MADE UNDER  
5 CONTRACTS AND SUBCONTRACTS AWARDED IN THE FOLLOWING  
6 INDUSTRIES:

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

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

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

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

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

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

1 HISTORICALLY UNDERUTILIZED BUSINESSES IN THAT FISCAL YEAR; AND

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

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

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

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

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

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

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

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

27 (VII) A QUALITATIVE ANALYSIS THAT PRESENTS THE BUSINESS

1 COMMUNITY'S EXPERIENCES AND PERCEPTIONS OF BARRIERS  
2 ENCOUNTERED IN CONTRACTING OR ATTEMPTING TO CONTRACT WITH THE  
3 STATE.

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

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

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

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

26 (2) TO ALLOW THE EXECUTIVE DIRECTOR TO TRACK CONTRACTS AS  
27 REQUIRED BY SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT MAY

1 REQUIRE VENDORS TO IDENTIFY SUBCONTRACTORS AND INDIRECT  
2 SPENDING UPON REQUEST BY THE DEPARTMENT.

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

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

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

22 **24-103-906. Gifts, grants, and donations.** THE DEPARTMENT  
23 MAY SOLICIT, ACCEPT, AND EXPEND GIFTS, GRANTS, AND DONATIONS TO  
24 FUND THE COSTS OF THE STUDY REQUIRED BY THIS PART 9.

25 **SECTION 2. Appropriation.** (1) For the 2015-16 state fiscal  
26 year, \$1,000,000 is appropriated to the department of personnel for use  
27 by the division of accounts and control. This appropriation consists of

1 \$666,667 from the general fund and \$333,333 cash funds from gifts,  
2 grants, and donations. To implement this act, the division may use this  
3 appropriation as follows:

4 (a) \$26,574 from the general fund for personal services related to  
5 procurement and contracts, which amount is based on an assumption that  
6 the division will require an additional 0.5 FTE;

7 (b) \$5,138 from the general fund for operating expenses related  
8 to procurement and contracts; and

9 (c) \$968,288, which consists of \$634,955 from the general fund  
10 and \$333,333 cash funds from gifts, grants, and donations, for vendor  
11 contract costs.

12 **SECTION 3. Effective date.** This act takes effect July 1, 2015.

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