

§ 143-128.4. Historically underutilized business defined; statewide uniform certification.

(a) As used in this Chapter, the term "historically underutilized business" means either of the following:

- (1) A business that meets both of the following conditions:
 - a. At least fifty-one percent (51%) of the business is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section, or in the case of a corporation, at least fifty-one percent (51%) of the stock is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section; and
 - b. The management and daily business operations are controlled by one or more owners of the business who are members of at least one of the groups set forth in subsection (b) of this section.
- (2) An Employee Stock Ownership Plan company in which at least fifty-one percent (51%) of the plan participants are members of at least one of the groups set forth in subsection (b) of this section. An ESOP company applying for certification as a historically underutilized business shall provide an attestation that it meets the requirements of this subdivision together with such documentation supporting the attestation as may be required by the Secretary.

(a1) As used in this Chapter, the term "minority business" means a historically underutilized business.

(b) To qualify as a historically underutilized business under this section, a business must be owned and controlled as set forth in subsection (a) of this section by one or more citizens or lawful permanent residents of the United States who are members of one or more of the following groups:

- (1) Black. – A person having origins in any of the black racial groups of Africa.
- (2) Hispanic. – A person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race.
- (3) Asian American. – A person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands.
- (4) American Indian. – A person having origins in any of the original Indian peoples of North America.
- (5) Female.
- (6) Disabled. – A person with a disability as defined in G.S. 168-1 or G.S. 168A-3.
- (7) Disadvantaged. – A person who is socially and economically disadvantaged as defined in 15 U.S.C. § 637.

(c) In addition to the powers and duties provided in G.S. 143-49, the Secretary of Administration shall have the power, authority, and duty to:

- (1) Develop and administer a statewide uniform program for: (i) the certification of a historically underutilized business, as defined in this section, for use by State departments, agencies, and institutions, and political subdivisions of the State; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses.
- (2) Adopt rules and procedures for the statewide uniform certification of historically underutilized businesses.
- (3) Provide for the certification of all businesses designated as historically underutilized businesses to be used by State departments, agencies, and institutions, and political subdivisions of the State.

(d) The Secretary of Administration shall seek input from State departments, agencies, and institutions, political subdivisions of the State, and any other entity deemed appropriate to determine the qualifications and criteria for statewide uniform certification of historically underutilized businesses.

(e) Only businesses certified in accordance with this section shall be considered by State departments, agencies, and institutions, and political subdivisions of the State as historically underutilized businesses for minority business participation purposes under this Chapter. (2005-270, s. 3; 2007-392, s. 4; 2009-243, s. 3; 2023-134, s. 20.4(b); 2024-42, s. 5(a); 2024-44, s. 5.)