
A BILL FOR AN ACT

RELATING TO STATE ENTERPRISE ZONES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that agriculture in
2 Hawaii is a vital component of Hawaii's economy. It provides
3 the State with export products, a diversity of employment
4 opportunities, a stage for tourism, and an opportunity for land
5 and water stewardship. The legislature also finds that to
6 encourage further economic development in rural areas,
7 agriculture must be given the chance to prosper. While
8 thousands of acres of agricultural land lie idle, new and
9 existing agricultural ventures must be encouraged to expand and
10 develop. More incentives must be provided to give agricultural
11 entrepreneurs the opportunity to build long-lasting businesses
12 in Hawaii.

13 The legislature further finds that the state enterprise
14 zone program is one method that provides business incentives to
15 encourage agricultural activity. However, employment
16 requirements to qualify for this program discourage many
17 agricultural businesses from applying or qualifying. While
18 agricultural businesses are confronted by challenges similar to



1 those faced by other small businesses, agricultural businesses
2 labor under unique circumstances that compound the complexity of
3 building a successful business. Agricultural employment is
4 dependent on local and global markets, seasonal crops, labor
5 availability, and weather conditions. It is very difficult for
6 agricultural businesses to meet the existing employment
7 requirements of the state enterprise zone program. Therefore,
8 the legislature recognizes that action needs to be taken to
9 allow more agricultural businesses the opportunity to
10 participate in the state enterprise zone program.

11 The purpose of this Act is to address the unique
12 circumstances of agricultural businesses under the state
13 enterprise zone program by:

- 14 (1) Establishing that agricultural businesses shall remain
15 eligible for tax incentives in the event of force
16 majeure;
- 17 (2) Allowing agricultural businesses to meet annual gross
18 revenue requirements if the businesses are unable to
19 meet annual full-time employee requirements;
- 20 (3) Clarifying the definition of "full-time employee" by
21 including leased employees and employees under a joint
22 employer relationship; and



1 (4) Clarifying that the taxpayer claiming a tax credit or
2 exemption under the state enterprise zone program, may
3 not claim any other tax credit or exemption that is
4 identical to the claimed tax credit or exemption.

5 SECTION 2. Chapter 209E, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 "§209E- Force majeure event; agricultural businesses.

9 If an agricultural business is:

- 10 (1) Wholly or partially prevented from maintaining
11 eligibility requirements under section 209E-9; or
12 (2) Interrupted,
13 by reason of or through any force majeure event, then the
14 agricultural business shall not be disqualified under this
15 chapter. The agricultural business shall remain eligible for
16 all tax incentives under this chapter during any period of time
17 under paragraph (1) or (2) caused by a force majeure event, and
18 the seven-year eligibility period shall be extended by this
19 period of time. The agricultural business shall be as prompt
20 and diligent as practicable in providing the department with
21 notice of a force majeure event or of any situation that may
22 lead to a force majeure event."



1 SECTION 3. Section 209E-1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§209E-1[+] **Purpose.** It is declared that the health,
4 safety, and welfare of the people of this State are dependent
5 upon the continual encouragement, development, growth, and
6 expansion of the private sector, and that there are certain
7 areas in the State that need the particular attention of
8 government to help attract private sector investment.
9 Therefore, it is the purpose of this chapter to stimulate
10 business, agricultural, and industrial growth in areas [which]
11 that would result in neighborhood revitalization of those areas
12 by means of regulatory flexibility and tax incentives."

13 SECTION 4. Section 209E-2, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By adding four new definitions to be appropriately
16 inserted and to read:

17 ""Agricultural business" means any corporation,
18 partnership, or sole proprietorship authorized to do business in
19 the State that is qualified under section 209E-9, subject to the
20 state corporate or individual income tax under chapter 235, and
21 that is engaged in producing agricultural products pursuant to
22 section 237-5, or processing agricultural products.



1 "Force majeure event" means an event, including damaging
2 weather or natural disasters such as epidemic disease, pest
3 outbreak, high wind, thunderstorm, hail storm, tornado, fire,
4 flood, earthquake, lava flow or other volcanic activity,
5 drought, tidal wave, hurricane, or without limiting or
6 restricting the foregoing in any way, any event reasonably
7 beyond the control of, and not attributable to neglect by, an
8 agricultural business.

9 "Joint employer" means:

- 10 (1) Where there is an arrangement between the employers to
11 share the employee's services, as for example, to
12 interchange employees;
- 13 (2) Where one employer is acting directly or indirectly in
14 the interest of the other employer or employers in
15 relation to the employee; or
- 16 (3) Where the employers are not completely disassociated
17 with respect to the employment of a particular
18 employee and may be deemed to share control of the
19 employee, directly or indirectly, by reason of the
20 fact that one employer controls, is controlled by, or
21 is under common control with the other employer.



1 "Leased employee" means an employee under a professional
2 employment organization arrangement who is assigned to a
3 particular client company on a substantially full-time basis for
4 at least one year."

5 2. By amending the definition of "full-time employee" to
6 read:

7 "Full-time employee" means any employee, including leased
8 employees and employees under a joint employer relationship, for
9 whom the employer is legally required to provide employee fringe
10 benefits."

11 SECTION 5. Section 209E-4, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§209E-4 Enterprise zone designation.** (a) The governing
14 body of any county may apply in writing to the department to
15 have an area declared to be an enterprise zone. The application
16 shall include a description of the location of the area or areas
17 in question, and a general statement identifying proposed local
18 incentives to complement the state and any federal incentives.

19 (b) The governor, upon the recommendation of the director,
20 shall approve the designation of up to six areas in each county
21 as enterprise zones for a period of twenty years. Any such area
22 shall be located in one United States census tract or two or



1 more contiguous United States census tracts in accordance with
2 the most recent decennial United States Census. The census
3 tract or tracts within which each enterprise zone is located
4 also shall meet at least one of the following criteria:

5 (1) Twenty-five per cent or more of the population have
6 incomes below eighty per cent of the median family
7 income of the county; or

8 (2) The unemployment rate is 1.5 times the state average.

9 ~~[(c) Notwithstanding subsection (b), census tract #405
10 within the county of Kauai shall be eligible for designation as
11 an enterprise zone. The eligibility for designation shall
12 remain in effect until January 1, 1997, unless the governor
13 earlier determines that the eligibility is no longer necessary.~~

14 ~~(d) Notwithstanding subsection (b) or (c), only lands
15 classified as agricultural in the Waialua district on Oahu, as
16 defined in section 4-1(3) (D), shall be designated an enterprise
17 zone on July 1, 1997, and the designation shall remain in effect
18 until June 30, 2002.] "~~

19 SECTION 6. Section 209E-7, Hawaii Revised Statutes, is
20 amended to read as follows:

21 " ~~[+] §209E-7 [.]~~ Government assistance; prohibition. ~~[There
22 shall be no duplication of existing state tax incentives to~~



1 ~~qualified business firms which locate in an enterprise zone.] If~~
 2 any tax credit or tax exemption is claimed under this chapter,
 3 the taxpayer claiming that tax credit or tax exemption shall not
 4 claim any other tax credit or tax exemption under any other law,
 5 that is identical to the claimed tax credit or tax exemption."

6 SECTION 7. Section 209E-9, Hawaii Revised Statutes, is
 7 amended by amending subsections (a) to (c) to read as follows:

8 "(a) Any business [firm] may be eligible to be designated
 9 a qualified business for purposes of this chapter if the
 10 business:

- 11 (1) Begins the operation of a trade or business within an
 12 enterprise zone;
- 13 (2) During each taxable year has at least fifty per cent
 14 of its enterprise zone establishment's gross receipts
 15 attributable to the active conduct of trade or
 16 business within the enterprise zone;
- 17 (3) Increases its average annual number of full-time
 18 employees by at least ten per cent by the end of its
 19 first tax year of participation; provided that if an
 20 agricultural business is unable to achieve the
 21 required increase in its average annual number of
 22 full-time employees, the requirement to increase



1 employment shall be replaced by a requirement to
2 increase its cumulative average annual gross revenues
3 by at least two per cent by the end of the first tax
4 year of participation; and

5 (4) During each subsequent taxable year, at least
6 maintains that higher level of employment ~~[-]~~ or gross
7 revenues.

8 (b) A business [~~firm~~] also may be eligible to be
9 designated a qualified business for purposes of this chapter if
10 the business:

11 (1) Is actively engaged in the conduct of a trade or
12 business in an area immediately prior to an area being
13 designated an enterprise zone;

14 (2) Meets the requirements of subsection (a) (2); and

15 (3) Increases its average annual number of full-time
16 employees employed at the business' establishment or
17 establishments located within the enterprise zone by
18 at least ten per cent annually ~~[-]~~; provided that if an
19 agricultural business is unable to achieve the
20 required increase in its average annual number of
21 full-time employees, the requirement to increase
22 employment shall be replaced by a requirement to



1 increase its cumulative average annual gross revenues
2 by at least two per cent annually.

3 (c) After designation as an enterprise zone, each
4 qualified business [~~firm~~] in the zone shall submit annually to
5 the department an approved form supplied by the department that
6 provides the information necessary for the department to
7 determine if the business [~~firm~~] qualifies as a qualified
8 business. The approved form shall be submitted by each business
9 to the governing body of the county in which the enterprise zone
10 is located, then forwarded to the department by the governing
11 body of the county."

12 SECTION 8. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 9. This Act shall take effect on approval;
15 provided that this Act shall apply to taxable years beginning
16 after December 31, 2006.



Report Title:

Force Majeure; Agricultural Businesses; Enterprise Zones

Description:

Provides that qualifying agricultural businesses shall remain eligible for tax incentives under the EZ program in the event of force majeure; allows agricultural businesses to meet gross revenue requirements if they are unable to meet the full-time employment requirements of the EZ program. (SD1)

