
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 enterprise
13 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 enterprise zone program, may not
3 claim any other tax credit or exemption for the same
4 costs or other items used to claim the tax credit or
5 exemption under the enterprise zone program.

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

9 **§209E- Agricultural business; extension of tax**
10 **incentives.** The department may extend all tax incentives
11 provided under this chapter to existing qualified agricultural
12 businesses for no more than the number of months of a force
13 majeure event.

14 **§209E- Force majeure event; agricultural businesses.** If
15 an agricultural business is:

16 (1) Wholly or partially prevented from maintaining
17 eligibility requirements under section 209E-9; or

18 (2) Interrupted,
19 by reason of or through any force majeure event, then the
20 agricultural business shall not be disqualified under this
21 chapter. The agricultural business shall remain eligible for
22 all tax incentives under this chapter during any period caused



1 by a force majeure event, and the seven-year eligibility period
2 shall be extended by the number of months of the force majeure
3 event. The agricultural business shall be as prompt and
4 diligent as practicable in providing the department with notice
5 of a force majeure event or of any situation that may lead to a
6 force majeure event."

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

9 "[~~f~~]**S209E-1**[~~]~~ **Purpose.** It is declared that the health,
10 safety, and welfare of the people of this State are dependent
11 upon the continual encouragement, development, growth, and
12 expansion of the private sector, and that there are certain
13 areas in the State that need the particular attention of
14 government to help attract private sector investment.
15 Therefore, it is the purpose of this chapter to stimulate
16 business, agricultural, and industrial growth in areas [~~which~~]
17 that would result in neighborhood revitalization of those areas
18 by means of regulatory flexibility and tax incentives."

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

21 1. By adding three new definitions to be appropriately
22 inserted and to read:



1 "Agricultural business" means any corporation,
2 partnership, or sole proprietorship authorized to do business in
3 the state that is qualified under section 209E-9, subject to the
4 state corporate or individual income tax under chapter 235, and
5 that is engaged in producing or processing agricultural products
6 pursuant to section 237-5.

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

15 "Joint employer" means:

- 16 (1) Where there is an arrangement between the employers to
17 share the employee's services, as for example, to
18 interchange employees;
19 (2) Where one employer is acting directly or indirectly in
20 the interest of the other employer or employers in
21 relation to the employee; or



1 (3) Where the employers are not completely disassociated
2 with respect to the employment of a particular
3 employee and may be deemed to share control of the
4 employee, directly or indirectly, by reason of the
5 fact that one employer controls, is controlled by, or
6 is under common control with the other employer.

7 "Leased employee" means an employee under a professional
8 employment organization arrangement who is assigned to a
9 particular client company on a substantially full-time basis for
10 at least one year."

11 2. By amending the definition of "full-time employee" to
12 read:

13 "Full-time employee" means any employee, including leased
14 employees and employees under a joint employer relationship, for
15 whom the employer is legally required to provide employee fringe
16 benefits."

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

19 "**§209E-4 Enterprise zone designation.** (a) The governing
20 body of any county may apply in writing to the department to
21 have an area declared to be an enterprise zone. The application
22 shall include a description of the location of the area or areas



1 in question, and a general statement identifying proposed local
2 incentives to complement the state and any federal incentives.

3 (b) The governor, upon the recommendation of the director,
4 shall approve the designation of up to six areas in each county
5 as enterprise zones for a period of twenty years. Any such area
6 shall be located in one United States census tract or two or
7 more contiguous United States census tracts in accordance with
8 the most recent decennial United States Census. The census
9 tract or tracts within which each enterprise zone is located
10 also shall meet at least one of the following criteria:

11 (1) Twenty-five per cent or more of the population have
12 incomes below eighty per cent of the median family
13 income of the county; or

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

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

20 ~~(d) Notwithstanding subsection (b) or (c), only lands~~
21 ~~classified as agricultural in the Waialua district on Oahu, as~~
22 ~~defined in section 4-1(3)(D), shall be designated an enterprise~~



1 ~~zone on July 1, 1997, and the designation shall remain in effect~~
2 ~~until June 30, 2002.] "~~

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

5 "~~[+]§209E-7[+] Government assistance; prohibition. [There~~
6 ~~shall be no duplication of existing state tax incentives to~~
7 ~~qualified business firms which locate in an enterprise zone.] If~~
8 any tax credit or tax exemption is claimed under this chapter,
9 the taxpayer claiming that tax credit or tax exemption may not
10 claim any other tax credit or tax exemption, under any other
11 law, for the same costs or other items used to claim the tax
12 credit or tax exemption under this chapter."

13 SECTION 7. Section 209E-9, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§209E-9 Eligibility; qualified business; sale of property**
16 **or services.** (a) Any business [~~firm~~] may be eligible to be
17 designated a qualified business for purposes of this chapter if
18 the business:

- 19 (1) Begins the operation of a trade or business within an
20 enterprise zone;
- 21 (2) During each taxable year has at least fifty per cent
22 of its enterprise zone establishment's gross receipts



1 attributable to the active conduct of trade or
2 business within the enterprise zone;
3 (3) Increases its average annual number of full-time
4 employees by at least ten per cent by the end of its
5 first tax year of participation; provided that if an
6 agricultural business is unable to achieve the
7 required increase in its average annual number of
8 full-time employees, the requirement to increase
9 employment shall be replaced by a requirement to
10 increase its cumulative average annual gross revenues
11 by at least two per cent by the end of the first tax
12 year of participation; and

13 (4) During each subsequent taxable year, at least
14 maintains that higher level of employment[-] or gross
15 revenues pursuant to paragraph (3).

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

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

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



1 (3) Increases its average annual number of full-time
2 employees employed at the business' establishment or
3 establishments located within the enterprise zone by
4 at least ten per cent annually[-]; provided that if an
5 agricultural business is unable to achieve the
6 required increase in its average annual number of
7 full-time employees, the requirement to increase
8 employment shall be replaced by a requirement to
9 increase its cumulative average annual gross revenues
10 by at least two per cent annually.

11 (c) After designation as an enterprise zone, each
12 qualified business [~~firm~~] in the zone shall submit annually to
13 the department an approved form supplied by the department that
14 provides the information necessary for the department to
15 determine if the business [~~firm~~] qualifies as a qualified
16 business. The approved form shall be submitted by each business
17 to the governing body of the county in which the enterprise zone
18 is located, then forwarded to the department by the governing
19 body of the county.

20 (d) The form referred to in subsection (c) shall be prima
21 facie evidence of the eligibility of a business for the purposes
22 of this section.



1 (e) Tangible personal property shall be sold at an
2 establishment of a qualified business within an enterprise zone
3 and the transfer of title to the buyer of the tangible personal
4 property shall take place in the same enterprise zone in which
5 the tangible personal property is sold. Services shall be sold
6 at an establishment of a qualified business engaged in a service
7 business within an enterprise zone, and the services shall be
8 delivered in the same enterprise zone in which they are sold.
9 Any services rendered outside an enterprise zone shall not be
10 deemed to be the services of a qualified business.

11 (f) For any fiscal year that includes September 11, 2001,
12 a business may use its average annual number of full-time
13 employees as of August 31, 2001--rather than its average annual
14 number at the end of its fiscal year including
15 September 11, 2001--if necessary to meet the requirements of
16 subsection (a)(3) and (4) or (b)(3). A business may also use
17 its average annual number of full-time employees at the end of
18 its fiscal year that includes September 11, 2001, as its base
19 number of full-time employees if necessary to meet the
20 requirements of subsection (a)(3) and (4) or (b)(3) in future
21 fiscal years."



H.B. NO. 1923

1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 2007, and
4 shall apply to taxable years beginning after December 31, 2006.
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INTRODUCED BY:

By name

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JAN 24 2007



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.

