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# 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 paragraphs (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 "[~~f~~]**S209E-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~~] 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 "[~~†~~]**S209E-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 may 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) through (c) to read as  
8 follows:

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

12 (1) Begins the operation of a trade or business within an  
13 enterprise zone;

14 (2) During each taxable year has at least fifty per cent  
15 of its enterprise zone establishment's gross receipts  
16 attributable to the active conduct of trade or  
17 business within the enterprise zone;

18 (3) Increases its average annual number of full-time  
19 employees by at least ten per cent by the end of its  
20 first tax year of participation; provided that if an  
21 agricultural business is unable to achieve the  
22 required increase in its average annual number of



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

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

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

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

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

16          (3) Increases its average annual number of full-time  
17          employees employed at the business' establishment or  
18          establishments located within the enterprise zone by  
19          at least ten per cent annually~~[-]~~; 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 annually.

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

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

15           SECTION 9. This Act shall take effect on July 1, 2007;  
16 provided that sections 2, 4, and 7 shall apply to taxable years  
17 beginning 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. (HB1923 HD1)

