



GOV. MSG. NO. 785

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

June 5, 2008

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 5, 2008, the following bill was signed into law:

HB2739 HD1 SD2 CD1

A BILL FOR AN ACT RELATING TO STATE  
ENTERPRISE ZONES.  
(ACT 143)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

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

4 "§209E- Force majeure event; agricultural businesses.

5 If a business engaged in agricultural production or processing  
6 is:

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

9 (2) Interrupted,

10 by reason of or through any force majeure event, then the  
11 business shall not be disqualified under this chapter. The  
12 business shall remain eligible for all tax incentives under this  
13 chapter during any period of time while experiencing conditions  
14 under paragraph (1) or (2) caused by a force majeure event, and  
15 the seven-year eligibility period shall be extended by an  
16 equivalent period of time. The business shall be as prompt and  
17 diligent as practicable in providing the department with notice



1 of a force majeure event or of any situation that may lead to a  
2 force majeure event."

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

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

15 SECTION 3. Section 209E-2, Hawaii Revised Statutes, is  
16 amended as follows:

17 1. By adding three new definitions to be appropriately  
18 inserted and to read:

19 "Force majeure event" means an event, including damaging  
20 weather or natural disasters such as epidemic disease, pest  
21 outbreak, high wind, thunderstorm, hail storm, tornado, fire,  
22 flood, earthquake, lava flow or other volcanic activity,



1 drought, tidal wave, hurricane, or without limiting or  
2 restricting the foregoing in any way, any event reasonably  
3 beyond the control of, and not attributable to neglect by, an  
4 agricultural business.

5 "Joint employment" means an employment arrangement:

- 6 (1) Between two or more employers to share an employee's  
7 services, as for example, to interchange employees;  
8 (2) In which one employer acts directly or indirectly in  
9 the interest of the other employer or employers in  
10 relation to the employee; or  
11 (3) In which two or more employers are not completely  
12 disassociated with respect to the employment of a  
13 particular employee and may be deemed to share control  
14 of the employee, directly or indirectly, by reason of  
15 the fact that one employer controls, is controlled by,  
16 or is under common control of the other employer.

17 "Leased employee" means an employee under a professional  
18 employment organization arrangement who is assigned to a  
19 particular client company on a substantially full-time basis for  
20 at least one year."

21 2. By amending the definition of "full-time employee" to  
22 read:



1        "Full-time employee" means any employee, including a  
2 leased employee and an employee under a joint employment  
3 arrangement, for whom the employer is legally required to  
4 provide employee fringe benefits."

5        3. By amending the definition of "qualified business" to  
6 read:

7        "Qualified business" means any corporation, partnership,  
8 or sole proprietorship authorized to do business in the [~~state~~]  
9 state that is qualified under section 209E-9, subject to the  
10 state corporate or individual income tax under chapter 235, and  
11 [~~is~~]:

12        (1) Engaged in manufacturing, the wholesale sale of  
13 tangible personal property as defined in section  
14 237-4, or a service business as defined in this  
15 chapter;

16        (2) Engaged in producing agricultural products where the  
17 business is a producer as defined in section 237-5[+],  
18 or engaged in processing agricultural products, all or  
19 some of which were grown within an enterprise zone;

20        (3) Engaged in research, development, sale, or production  
21 of all types of genetically-engineered medical,  
22 agricultural, or maritime biotechnology products; or



1 (4) Engaged in producing electric power from wind energy  
2 for sale primarily to a public utility company for  
3 resale to the public."

4 SECTION 4. Section 209E-9, Hawaii Revised Statutes, is  
5 amended by amending subsections (a) and (b) to read as follows:

6 "(a) Any business firm may be eligible to be designated a  
7 qualified business for purposes of this chapter if the business:

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

10 (2) During each taxable year has at least fifty per cent  
11 of its enterprise zone establishment's gross receipts  
12 attributable to the active conduct of trade or  
13 business within the enterprise zone; and

14 (3) (A) Increases its average annual number of full-time  
15 employees by at least ten per cent by the end of  
16 its first tax year of participation~~[+]~~, and

17 ~~[(4) During]~~ during each subsequent taxable year at least  
18 maintains that higher level of employment~~[+]~~; or

19 (B) Increases its gross sales of agricultural crops  
20 produced, or agricultural products processed  
21 within the enterprise zone by two per cent  
22 annually.



1 For business firms engaged in producing or processing  
2 agricultural products, receipts from value-added products made  
3 from crops grown within an enterprise zone and sold at retail  
4 pursuant to the limits of subsection (e) shall count toward the  
5 gross receipts requirement under paragraph (2).

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

- 9 (1) Is actively engaged in the conduct of a trade or  
10 business in an area immediately prior to an area being  
11 designated an enterprise zone;
- 12 (2) Meets the requirements of subsection (a) (2); and
- 13 (3) (A) Increases its average annual number of full-time  
14 employees employed at the business' establishment  
15 or establishments located within the enterprise  
16 zone by at least ten per cent [~~annually.~~] by the  
17 end of the first year of operation, and by at  
18 least fifteen per cent by the end of each of the  
19 fourth, fifth, sixth, and seventh years of  
20 operation; provided that the percentage increase  
21 shall be based upon the employee count at the



1           beginning of the initial year of operation within  
2           the enterprise zone; or  
3           (B) Increases its gross sales of agricultural crops  
4           produced, or agricultural products processed  
5           within the enterprise zone by two per cent  
6           annually."

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

9           "**§209E-11 State general excise exemptions.** The department  
10 shall certify annually to the department of taxation that any  
11 qualified business is exempt from the payment of general excise  
12 taxes on the gross proceeds from the manufacture of tangible  
13 personal property, the wholesale sale of tangible personal  
14 property, the engaging in a service business by a qualified  
15 business, or the engaging in research, development, sale, or  
16 production of all types of genetically-engineered medical,  
17 agricultural, or maritime biotechnology products[-]; provided  
18 that agricultural businesses other than those engaged in the  
19 production of genetically-engineered agricultural products shall  
20 not be exempt from the payment of general excise taxes on the  
21 gross proceeds of agricultural retail sales. The gross proceeds  
22 received by a contractor licensed under chapter 444 shall be



1 exempt from the general excise tax for construction within an  
2 enterprise zone performed for a qualified business within an  
3 enterprise zone. The exemption shall extend for a period not to  
4 exceed seven years[-]; provided that if a force majeure event  
5 occurs, then the period of time shall be tolled until the force  
6 majeure event ceases."

7 SECTION 6. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect on July 1, 2008;  
10 provided that section 209E-9(b) (3) (A) in section 4 of this Act  
11 shall only apply to enterprise zones established pursuant to  
12 chapter 209E, Hawaii Revised Statutes, after the effective date  
13 of this Act.

APPROVED this 5 day of JUN , 2008

GOVERNOR OF THE STATE OF HAWAII

