ACT 146

H.B. NO. 2454

A Bill for an Act Relating to Enterprise Zones.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that due to the negative economic impact of the terrorist attacks in New York City and Virginia on September 11, 2001, there is a need to amend the hiring requirements for firms enrolled in the Hawaii Enterprise Zones (EZ) partnership. Most participating EZ firms may find it difficult to increase their hiring as required by the EZ program criteria in the near future, and may even be forced to lay off employees. As a result, this Act:

(1) Allows all firms enrolled in the EZ partnership before September 11, 2001, to use their average number of full-time employees from the beginning of their current fiscal year until August 31, 2001, to determine their qualification for EZ tax benefits for the entirety of their current fiscal year; and

(2) Allows all firms enrolled in the EZ partnership before September 11, 2001, to reduce their base number of full-time employees—the number used to calculate their future annual increases—to the average annual number of full-time employees at the end of their current fiscal year if lower than their original base number of full-time employees.

This Act also eliminates the use tax exemption for EZ-qualified firms. This incentive conflicts with the intent of the EZ partnership by encouraging EZ-enrolled firms to purchase supplies and equipment from out-of-state rather than local vendors.

SECTION 2. Section 209E-9, Hawaii Revised Statutes, is amended to read as follows:

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

(1) Begins the operation of a trade or business within an enterprise zone;
(2) During each taxable year has at least fifty per cent of its enterprise zone establishment's gross receipts attributable to the active conduct of trade or business within the enterprise zone;
(3) Increases its average annual number of full-time employees by at least ten per cent by the end of its first tax year of participation; and
(4) During each subsequent taxable year at least maintains that higher level of employment.

(b) A business firm also may be eligible to be designated a qualified business for purposes of this chapter if the business:

(1) Is actively engaged in the conduct of a trade or business in an area immediately prior to an area being designated an enterprise zone;
(2) Meets the requirements of subsection (a)(2); and
(3) Increases its average annual number of full-time employees employed at the business' establishment or establishments located within the enterprise zone by at least ten per cent annually.

(c) After designation as an enterprise zone, each qualified business firm in the zone shall submit annually to the department an approved form supplied by the department that provides the information necessary for the department to determine if the business firm qualifies as a qualified business. The approved form shall be submitted by each business to the governing body of the county in which the enterprise zone is located, then forwarded to the department by the governing body of the county.

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

(e) Tangible personal property shall be sold at an establishment of a qualified business within an enterprise zone and the transfer of title to the buyer of the tangible personal property shall take place in the same enterprise zone in which the tangible personal property is sold. Services shall be sold at an establishment of a qualified business engaged in a service business within an enterprise zone and the services shall be delivered in the same enterprise zone in which sold. Any services rendered outside an enterprise zone shall not be deemed to be the services of a qualified business.

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

SECTION 3. Section 209E-11, Hawaii Revised Statutes, is amended to read as follows:

"**§209E-11 State general excise [~~and use tax~~] exemptions.** The department shall certify annually to the department of taxation that any qualified business is exempt from the payment of general excise taxes on the gross proceeds from the manufacture of tangible personal property, the wholesale sale of tangible personal property, the engaging in a service business by a qualified business, or the engaging in research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products. [~~The department shall also certify annually to the department of taxation that any qualified business is exempt from the use tax for purchases by the qualified business.~~] The gross proceeds received by a contractor licensed under chapter 444 shall be exempt from the general excise tax for construction within an enterprise zone performed for a qualified business within an enterprise zone. The exemption shall extend for a period not to exceed seven years.''

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 7, 2002.)