

ACT 143

H.B. NO. 2739

A Bill for an Act Relating to State Enterprise Zones.

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

SECTION 1. Chapter 209E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§209E- Force majeure event; agricultural businesses. If a business engaged in agricultural production or processing is:

- (1) Wholly or partially prevented from maintaining eligibility requirements under section 209E-9; or
- (2) Interrupted,

by reason of or through any force majeure event, then the business shall not be disqualified under this chapter. The business shall remain eligible for all tax incentives under this chapter during any period of time while experiencing conditions under paragraph (1) or (2) caused by a force majeure event, and the seven-year eligibility period shall be extended by an equivalent period of time. The business shall be as

prompt and diligent as practicable in providing the department with notice of a force majeure event or of any situation that may lead to a force majeure event.”

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

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

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

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

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

“Joint employment” means an employment arrangement:

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

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

2. By amending the definition of “full-time employee” to read:

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

3. By amending the definition of “qualified business” to read:

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

- (1) Engaged in manufacturing, the wholesale sale of tangible personal property as defined in section 237-4, or a service business as defined in this chapter;
- (2) Engaged in producing agricultural products where the business is a producer as defined in section 237-5[5], or engaged in processing agricultural products, all or some of which were grown within an enterprise zone;

- (3) Engaged in research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products; or
- (4) Engaged in producing electric power from wind energy for sale primarily to a public utility company for resale to the public.”

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

“(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; and
- (3) (A) 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]~~ during each subsequent taxable year at least maintains that higher level of employment[-]; or
(B) Increases its gross sales of agricultural crops produced, or agricultural products processed within the enterprise zone by two per cent annually.

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

(b) A business firm [also] may also 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) (A) 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.] by the end of the first year of operation, and by at least fifteen per cent by the end of each of the fourth, fifth, sixth, and seventh years of operation; provided that the percentage increase shall be based upon the employee count at the beginning of the initial year of operation within the enterprise zone; or
(B) Increases its gross sales of agricultural crops produced, or agricultural products processed within the enterprise zone by two per cent annually.”

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

“**§209E-11 State general excise 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[-]; provided that agricultural businesses other than those engaged in the production of genetically-engineered agricultural

products shall not be exempt from the payment of general excise taxes on the gross proceeds of agricultural retail sales. 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[-]; provided that if a force majeure event occurs, then the period of time shall be tolled until the force majeure event ceases.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Approved June 5, 2008.)

Note

1. Edited pursuant to HRS §23G-16.5.