
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.



Report Title:

Enterprise Zones; Agriculture; Eligibility; General Excise Tax

Description:

Allows agricultural businesses to continue to qualify for enterprise zone (EZ) benefits in case of force majeure events. Includes agricultural growth as one of the EZ purposes. Includes leased and jointly employed workers in hiring formulas. Changes schedule of hiring increases needed to qualify for EZ benefits and allows increases in agricultural gross sales and value-added product retail sales to count toward qualification. Disallows general excise tax exemption for agricultural product retail sales. Provides that new employment requirements for business located in an area that becomes an EZ only apply to EZs established after the effective date of the bill. (HB2739 CD1)

