
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 wide range of employment
4 opportunities, a stage for tourism, and an opportunity for land
5 and water stewardship. However, thousands of acres of
6 agricultural land lie idle. To encourage further economic
7 development in rural areas, agriculture must be given the chance
8 to prosper. New and existing agricultural ventures must be
9 encouraged to expand and develop. More incentives must be
10 provided to give agricultural entrepreneurs the opportunity to
11 build long-lasting businesses in Hawaii.

12 The legislature further finds that the state enterprise
13 zone program provides regulatory flexibility and tax incentives
14 that are designed to stimulate the growth of business in
15 designated areas. It represents one method of encouraging the
16 establishment and development of agricultural businesses.
17 However, unlike other small businesses, agricultural businesses
18 are confronted by unique employment challenges that make it more



1 difficult to build a successful business. Agricultural
2 employment is highly dependent on local and global markets,
3 seasonal crops, labor availability, and weather conditions.

4 The legislature finds that the enterprise zone program has
5 employment requirements that do not recognize the unique
6 employment-related challenges that agricultural businesses face.
7 These employment requirements discourage many agricultural
8 businesses from applying for the program, or make it difficult
9 for these businesses to qualify. The legislature recognizes
10 that action is needed to allow more agricultural businesses to
11 participate in the state enterprise zone program.

12 The purpose of this Act is to address the unique
13 circumstances of agricultural businesses under the enterprise
14 zones program by, among other things:

- 15 (1) Providing that agricultural businesses shall remain
16 eligible for tax incentives in the event of force
17 majeure;
- 18 (2) Allowing agricultural businesses that are unable to
19 meet annual full-time employee requirements to instead
20 meet annual gross revenue requirements;



1 (3) Clarifying that "full-time employee" includes leased
2 employees and employees under a joint employer
3 relationship; and

4 (4) Clarifying that the taxpayer claiming a tax credit or
5 exemption under the enterprise zones program, may not
6 claim any other tax credit or exemption that is
7 identical to the credit or exemption claimed.

8 SECTION 2. Chapter 209E, Hawaii Revised Statutes, is
9 amended by adding two new sections to be appropriately
10 designated and to read as follows:

11 **§209E- Agricultural business; extension of tax**
12 **incentives.** The department shall extend all tax incentives
13 provided under this chapter to existing qualified agricultural
14 businesses for no more than the number of months of the duration
15 of a force majeure event.

16 **§209E- Force majeure event; agricultural businesses.** If
17 an agricultural business is:

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

20 (2) Interrupted,
21 by reason of or through any force majeure event, then the
22 agricultural business shall not be disqualified under this



1 chapter. The agricultural business shall remain eligible for
2 all tax incentives under this chapter during any period caused
3 by a force majeure event, and the seven-year eligibility period
4 shall be extended by the number of months of the duration of the
5 force majeure event. The agricultural business shall be as
6 prompt and diligent as practicable in providing the department
7 with notice of a force majeure event or of any situation that
8 may lead to a force majeure event."

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

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

21 SECTION 4. Section 209E-2, Hawaii Revised Statutes, is
22 amended as follows:



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

3 "Agricultural business" means any corporation,
4 partnership, or sole proprietorship authorized to do business in
5 the state that is:

6 (1) Qualified under section 209E-9;

7 (2) Subject to the state corporate or individual income
8 tax under chapter 235; and

9 (3) A producer of agricultural products as defined in
10 section 237-5 or engaged in processing agricultural
11 products.

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

20 "Joint employer" means an employment relationship in which:



1 (1) There is an arrangement between employers to share an
2 employee's services, for example, to interchange
3 employees;

4 (2) An employer is acting directly or indirectly in the
5 interest of other employers in relation to the
6 employee; or

7 (3) The employers are not completely disassociated with
8 respect to the employment of an employee and may be
9 deemed to share direct or indirect control of the
10 employee because one employer controls, is controlled
11 by, or is under common control with the other
12 employer.

13 "Leased employee" means an employee under a professional
14 employment organization arrangement who is assigned to a client
15 company substantially on a full-time basis for at least one
16 year."

17 2. By amending the definition of "full-time employee" to
18 read:

19 "Full-time employee" means any employee, including leased
20 employees and employees under a joint employer relationship, for
21 whom the employer is legally required to provide employee fringe
22 benefits."



1 SECTION 5. Section 209E-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§209E-4 Enterprise zone designation.** (a) The governing
4 body of any county may apply in writing to the department to
5 have an area declared to be an enterprise zone. The application
6 shall include a description of the location of the area or areas
7 in question, and a general statement identifying proposed local
8 incentives to complement the state and any federal incentives.

9 (b) The governor, upon the recommendation of the director,
10 shall approve the designation of up to six areas in each county
11 as enterprise zones for a period of twenty years. Any such area
12 shall be located in one United States census tract or two or
13 more contiguous United States census tracts in accordance with
14 the most recent decennial United States Census. The census
15 tract or tracts within which each enterprise zone is located
16 also shall meet at least one of the following criteria:

17 (1) Twenty-five per cent or more of the population have
18 incomes below eighty per cent of the median family
19 income of the county; or

20 (2) The unemployment rate is 1.5 times the state average.

21 ~~[(c) Notwithstanding subsection (b), census tract #405~~
22 ~~within the county of Kauai shall be eligible for designation as~~



1 ~~an enterprise zone. The eligibility for designation shall~~
2 ~~remain in effect until January 1, 1997, unless the governor~~
3 ~~earlier determines that the eligibility is no longer necessary.~~

4 ~~(d) Notwithstanding subsection (b) or (c), only lands~~
5 ~~classified as agricultural in the Waialua district on Oahu, as~~
6 ~~defined in section 4-1(3)(D), shall be designated an enterprise~~
7 ~~zone on July 1, 1997, and the designation shall remain in effect~~
8 ~~until June 30, 2002.] "~~

9 SECTION 6. Section 209E-7, Hawaii Revised Statutes, is
10 amended to read as follows:

11 " ~~[†]§209E-7[†]~~ **Government assistance; prohibition.** ~~[There~~
12 ~~shall be no duplication of existing state tax incentives to~~
13 ~~qualified business firms which locate in an enterprise zone.] If~~
14 ~~any tax credit or tax exemption is claimed under this chapter,~~
15 ~~the taxpayer claiming that tax credit or tax exemption may not~~
16 ~~claim any tax credit or tax exemption under any other law, that~~
17 ~~is identical to the claimed tax credit or tax exemption."~~

18 SECTION 7. Section 209E-9, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending subsections (a) to (c) to read:



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

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

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

10 (3) Increases its average annual number of full-time
11 employees by at least ten per cent by the end of its
12 first tax year of participation; provided that if an
13 agricultural business is unable to achieve the
14 increase in employees required by this paragraph, the
15 agricultural business instead may increase its
16 cumulative average annual gross revenues by at least
17 two per cent by the end of its first tax year of
18 participation; and

19 (4) During each subsequent taxable year, at least
20 maintains that higher level of employment[-] or gross
21 revenues pursuant to paragraph (3).



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

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

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

8 (3) Increases its average annual number of full-time
9 employees employed at the business' establishment or
10 establishments located within the enterprise zone by
11 at least ten per cent annually~~[-]~~; provided that if an
12 agricultural business is unable to achieve the
13 increase in employees required by this paragraph, the
14 agricultural business instead may increase its
15 cumulative average annual gross revenues by at least
16 two per cent annually.

17 (c) After designation as an enterprise zone, each
18 qualified business [~~firm~~] in the zone shall submit annually to
19 the department an approved form supplied by the department that
20 provides the information necessary for the department to
21 determine if the business [~~firm~~] qualifies as a qualified
22 business. The approved form shall be submitted by each business



1 to the governing body of the county in which the enterprise zone
2 is located, then forwarded to the department by the governing
3 body of the county."

4 2. By amending subsection (e) to read:

5 "(e) Tangible personal property shall be sold at an
6 establishment of a qualified business within an enterprise zone
7 and the transfer of title to the buyer of the tangible personal
8 property shall take place in the same enterprise zone in which
9 the tangible personal property is sold. Services shall be sold
10 at an establishment of a qualified business engaged in a service
11 business within an enterprise zone, and the services shall be
12 delivered in the same enterprise zone in which they are sold.
13 Any services rendered outside an enterprise zone shall not be
14 deemed to be the services of a qualified business."

15 SECTION 8. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 9. This Act shall take effect on July 1, 2006, and
18 shall apply to taxable years beginning after December 31, 2005.



Report Title:

State Enterprise Zones (EZ); Agricultural Businesses; Force Majeure

Description:

Establishes that agricultural businesses shall remain eligible for tax incentives under the EZ program in the event of force majeure. Allows agricultural businesses to meet annual gross revenue requirements if the businesses are unable to meet annual full-time employee requirements. Clarifies the definition of "full-time employees". Specifies that tax credits taken in the EZ program cannot be duplicated in other tax incentive programs. (HB2769 HD1)

