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

13           The legislature further finds that the state enterprise  
14 zone program is one method that provides business incentives to  
15 encourage agricultural activity. However, employment  
16 requirements to qualify for this program discourage many  
17 agricultural businesses from applying or qualifying. While  
18 agricultural businesses are confronted by challenges similar to



1 those faced by other small businesses, agricultural businesses  
2 labor under unique circumstances that compound the complexity of  
3 building a successful business. Agricultural employment is  
4 dependent on local and global markets, seasonal crops, labor  
5 availability, and weather conditions. It is very difficult for  
6 agricultural businesses to meet the existing employment  
7 requirements of the state enterprise zone program. Therefore,  
8 the legislature recognizes that action needs to be taken to  
9 allow more agricultural businesses the opportunity to  
10 participate in the state enterprise zone program.

11 The purpose of this Act is to address the unique  
12 circumstances of agricultural businesses under the enterprise  
13 zone program by:

- 14 (1) Establishing that agricultural businesses shall remain  
15 eligible for tax incentives in the event of force  
16 majeure;
- 17 (2) Allowing agricultural businesses to meet annual gross  
18 revenue requirements if the businesses are unable to  
19 meet annual full-time employee requirements;
- 20 (3) Clarifying the definition of "full-time employee" by  
21 including leased employees and employees under a joint  
22 employer relationship; and



1 (4) Clarifying that the taxpayer claiming a tax credit or  
2 exemption under chapter 209E, Hawaii Revised Statutes,  
3 may not claim any other tax credit or exemption that  
4 is identical to the claimed tax credit or exemption.

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

8 "§209E- Agricultural business; extension of tax  
9 incentives. The department may extend all tax incentives  
10 provided under this chapter to existing qualified agricultural  
11 businesses for no more than the number of months of the duration  
12 of a force majeure event.

13 §209E- Force majeure event; agricultural businesses. If  
14 an agricultural business is:

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

17 (2) Interrupted,  
18 by reason of or through any force majeure event, then the  
19 agricultural business shall not be disqualified under this  
20 chapter. The agricultural business shall remain eligible for  
21 all tax incentives under this chapter during any period caused  
22 by a force majeure event, and the seven-year eligibility period



1 shall be extended by the number of months of the duration of the  
2 force majeure event. The agricultural business shall be as  
3 prompt and diligent as practicable in providing the department  
4 with notice of a force majeure event or of any situation that  
5 may lead to a force majeure event."

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

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

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

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



1       "Agricultural business" means any corporation,  
2 partnership, or sole proprietorship authorized to do business in  
3 the State that is qualified under section 209E-9, subject to the  
4 state corporate or individual income tax under chapter 235, and  
5 that is engaged in producing agricultural products pursuant to  
6 section 237-5 or processing agricultural products.

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

15       "Joint employer" means:

16       (1) Where there is an arrangement between the employers to  
17 share the employee's services, as for example, to  
18 interchange employees;

19       (2) Where one employer is acting directly or indirectly in  
20 the interest of the other employer or employers in  
21 relation to the employee; or



1       (3) Where the employers are not completely disassociated  
2       with respect to the employment of a particular  
3       employee and may be deemed to share control of the  
4       employee, directly or indirectly, by reason of the  
5       fact that one employer controls, is controlled by, or  
6       is under common control with the other employer.

7       "Leased employee" means an employee under a professional  
8       employment organization arrangement who is assigned to a client  
9       company on a substantially full-time basis for at least one  
10      year."

11       2. By amending the definition of "full-time employee" to  
12      read:

13       "Full-time employee" means any employee, including leased  
14      employees and employees under a joint employer relationship, for  
15      whom the employer is legally required to provide employee fringe  
16      benefits."

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

19       "**§209E-4 Enterprise zone designation.** (a) The governing  
20      body of any county may apply in writing to the department to  
21      have an area declared to be an enterprise zone. The application  
22      shall include a description of the location of the area or areas



1 in question, and a general statement identifying proposed local  
2 incentives to complement the state and any federal incentives.

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

11 (1) Twenty-five per cent or more of the population have  
12 incomes below eighty per cent of the median family  
13 income of the county; or

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

15 ~~[(c) Notwithstanding subsection (b), census tract #405~~  
16 ~~within the county of Kauai shall be eligible for designation as~~  
17 ~~an enterprise zone. The eligibility for designation shall~~  
18 ~~remain in effect until January 1, 1997, unless the governor~~  
19 ~~earlier determines that the eligibility is no longer necessary.~~

20 ~~(d) Notwithstanding subsection (b) or (c), only lands~~  
21 ~~classified as agricultural in the Waialua district on Oahu, as~~  
22 ~~defined in section 4-1(3)(D), shall be designated an enterprise~~



1 ~~zone on July 1, 1997, and the designation shall remain in effect~~  
2 ~~until June 30, 2002.] "~~

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

5 " ~~[+] §209E-7 [.]~~ **Government assistance; prohibition.** ~~[There~~  
6 ~~shall be no duplication of existing state tax incentives to~~  
7 ~~qualified business firms which locate in an enterprise zone.]~~ If  
8 any tax credit or tax exemption is claimed under this chapter,  
9 the taxpayer claiming that tax credit or tax exemption may not  
10 claim any other tax credit or tax exemption, under any other  
11 law, that is identical to the claimed tax credit or tax  
12 exemption."

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

15 "**§209E-9 Eligibility; qualified business; sale of property**  
16 **or services.** (a) Any business ~~[firm]~~ may be eligible to be  
17 designated a qualified business for purposes of this chapter if  
18 the business:

- 19 (1) Begins the operation of a trade or business within an  
20 enterprise zone;
- 21 (2) During each taxable year has at least fifty per cent  
22 of its enterprise zone establishment's gross receipts





1           attributable to the active conduct of trade or  
2           business within the enterprise zone;

3           (3) Increases its average annual number of full-time  
4           employees by at least ten per cent by the end of its  
5           first tax year of participation; provided that if an  
6           agricultural business is unable to achieve the  
7           required increase in its average annual number of  
8           full-time employees, the requirement to increase  
9           employment shall be replaced by a requirement to  
10          increase its cumulative average annual gross revenues  
11          by at least two per cent by the end of the first tax  
12          year of participation; and

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

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

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

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



1           (3) Increases its average annual number of full-time  
2 employees employed at the business' establishment or  
3 establishments located within the enterprise zone by  
4 at least ten per cent annually[-]; provided that if an  
5 agricultural business is unable to achieve the  
6 required increase in its average annual number of  
7 full-time employees, the requirement to increase  
8 employment shall be replaced by a requirement to  
9 increase its cumulative average annual gross revenues  
10 by at least two per cent by the end of the first tax  
11 year of participation.

12           (c) After designation as an enterprise zone, each  
13 qualified business [~~firm~~] in the zone shall submit annually to  
14 the department an approved form supplied by the department that  
15 provides the information necessary for the department to  
16 determine if the business [~~firm~~] qualifies as a qualified  
17 business. The approved form shall be submitted by each business  
18 to the governing body of the county in which the enterprise zone  
19 is located, then forwarded to the department by the governing  
20 body of the county.



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

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

14 (f) For any fiscal year that includes September 11, 2001,  
15 a business may use its average annual number of full-time  
16 employees as of August 31, 2001--rather than its average annual  
17 number at the end of its fiscal year including  
18 September 11, 2001--if necessary to meet the requirements of  
19 subsection (a) (3) and (4) or (b) (3). A business may also use  
20 its average annual number of full-time employees at the end of  
21 its fiscal year that includes September 11, 2001, as its base  
22 number of full-time employees if necessary to meet the



1 requirements of subsection (a) (3) and (4) or (b) (3) in future  
2 fiscal years."

3 SECTION 8. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

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

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**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.

