

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
THEODORE E. LIU
Director

Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON WAYS AND MEANS

Friday, March 28, 2008
9:30 A.M.
State Capitol, Conference Room 211

in consideration of
HB 2739 HD1 SD2
RELATING TO STATE ENTERPRISE ZONES

Chair Baker, Vice-Chair Tsutsui, and Committee members:

The department supports the concept of HB 2739 HD 1 SD2, which allows agricultural businesses to continue to qualify for zone benefits in case of *force majeure* events; includes leased and jointly employed workers in hiring formulas; changes schedule of hiring increases; expands the factors used to determine a qualified business eligible for the tax incentives to include gross sales from agricultural products; counts value-added agricultural product retail sales towards qualification for tax credits, and disallows general excise tax exemption for agricultural product retail sales.

There have been many good ideas introduced this legislative session that support the State's economic development goals, and we note that no appropriation is associated with this bill.

Agriculture is a vital component of Hawaii's economy, preserving open space essential to tourism and helping to protect our environment. Currently, there are more than 5500 farms, but as of January 2007, only 32 participated in the Enterprise Zone (EZ) Program. In 2006, only 12 of the 32 firms qualified for benefits, 4 companies did not qualify and the remaining 16 farmers did not file their annual reports. Common reasons for not filing included closing the business or knowing that certification criteria had not been met.

This bill will help farmers cope with natural disasters by allowing them to retain EZ eligibility when their operation has been negatively affected and then resume production, with the time added to their full participation period. This change would have benefited many farmers affected by the Spring 2006 floods on Oahu and Kauai and a few on the Big Island whose water systems were damaged by the Kiholo earthquake.

I would like to comment on one other highlight of this bill. This bill also allows for agricultural producers to qualify for certification based upon an increase in gross sales rather than employee increases. With the adoption of this measure, we will provide an opportunity for more of Hawaii's small, family run farms to take advantage of Enterprise Zone benefits by lowering their costs of doing business. As small farmers lower their costs, they increase their ability to become more sustainable, long-term businesses.

Thank you for the opportunity to offer these comments.



Bryan J. Baptiste
Mayor

Beth A. Tokioka
Director

Office of Economic Development

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TO THE SENATE COMMITTEE ON WAYS AND MEANS
SENATOR ROSALYN H. BAKER, CHAIR
SENATOR SHAN S. TSUTSUI, VICE CHAIR

Friday, March 28, 9:30 am
State Capitol, Conference Room 211

HB 2739 HD1 SD2: RELATING TO STATE ENTERPRISE ZONES

Dear Chair Baker and Committee members:

The Office of Economic Development supports the concept of HB 2739 HD 1 SD1, which allows agricultural businesses to continue to qualify for zone benefits in case of force majeure events; includes leased and jointly employed workers in hiring formulas; changes the timing of employee increases; counts value-added agricultural product retail sales towards qualification for tax credits, and allows ag producers to qualify for certification based upon an increase in gross sales rather than employee increases.

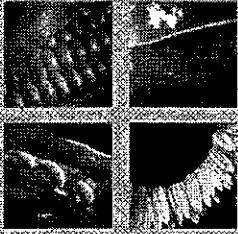
We all recognize that agriculture is an important sector of our economy. On Kaua'i, total farm acreage has been on the decline for decades – following the closure of the sugar plantations. While efforts to expand diversified agriculture have been somewhat successful, there are still significant barriers to those who wish to make agriculture their livelihood.

By making the Enterprise Zone program a viable entity through which agriculture-based businesses can access badly needed incentives and benefits, we enhance their ability to succeed.

OED is aware that there are some technical concerns raised by the Department of Business, Economic Development and Tourism, and we feel it is important to address these items. However, we strongly encourage you to support this bill and its intent to encourage agriculture throughout the State.

Thank you for your consideration.

Beth Tokioka



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Hawaii Crop Improvement Association

Growing the Future of Worldwide Agriculture in Hawaii

Testimony by: Sarah Styan

HB 2739sd2, State Enterprise Zones

Senate WAM Committee

Friday, March 28, 2008

Room 211: 9:30 am

Position: Support

Chair Baker and Members of the Senate WAM Committee:

My name is Sarah Styan. I am a Kauai resident, President of HCIA and research scientist of Pioneer Hi-Bred International, Waimea Research Station. The HCIA represents seed production and research facilities operating in Hawaii for nearly 40 years. The HCIA is comprised of five member companies that farm an estimated 8,000 acres on four islands, valued at \$97.6 million in operating budget (2006/2007 HASS). We are proud members of Hawaii's diversified agriculture and life sciences industries.

This is a measure that will facilitate the growth of Hawaii's agricultural industry by creating agricultural enterprise zones, in which farmers in specified rural areas may receive incentives for farming. It takes into account some of the unique challenges that farming brings to agricultural enterprise zones, primarily labor availability and weather conditions, and allows for certain value-added agricultural sales towards certification for this credit.

We support the provisions that allow for continued benefit of tax incentives during a force majeure event. The definitions for "joint employer" and "leased employee" are appreciated because in today's tight labor market, some of the agricultural employees are leased employees or may be employed by more than one farmer.

I can be reached at 808-338-8300 ext. 113 if there are any questions. Thank you for the opportunity to present testimony.

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WRITTEN COMMENTS FOR THE SENATE COMMITTEE ON WAYS AND MEANS

HB 2739 HD1 SD2

RELATING TO STATE ENTERPRISE ZONES

March 28, 2008

Dear Chair Baker, Vice Chair Tsutsui and Members of the Committee:

My name is Stephanie Whalen. I am President and Research Director of the Hawaii Agriculture Research Center (HARC). I am submitting written comments on behalf of the center, our research and support staff, and our members and clients.

HARC strongly supports HB 2739 HD1 SD2 Relating to State Enterprise Zones.

This incentive has been talked about and massaged for over 5 years. Huge incentives have been provided to potential new businesses: many take advantage and move on. Agriculture while considered an old industry IS NOT since it is transforming from the large scale single crop plantations to many small and diverse operations. THESE ARE NEW BUSINESSES either adapting to a new paradigm or starting from scratch and deserve your attention and incentivizing. These are the businesses that provide stability and employment in the rural areas keeping employee movement out of the urban corridor and keeping country country.

Finally there is recognition of the uniqueness of agricultural businesses. This bill would be very helpful in maintaining the viability of agriculture. In the transition from large scale farming to smaller and more diverse farms it is imperative that the statutes also change and adapt to the needs of this situation. There is a demonstrated employment crunch in Hawaii and finding employees is often very difficult, especially for agriculture. While we recognize the original intent of this statute was to increase employment, times have changed, all sectors are scrambling to find and keep employees in a very financially difficult environment. Increasing revenues is an equally important contribution to the economic viability of our state. Agriculture has been faced with labor shortages from its beginnings and is forced to be entrepreneurial in maintaining and

HB 2739 HD1 SD2

March 28, 2008

HARC

Page 1

increasing output while faced with a dwindling workforce. Providing for either employment or revenue increases will allow for more agricultural businesses to support in the business tax incentives.

The employee sharing concept is very progressive. Many of the newer crops do not require year-round labor but with the diversity developing, shared or leased employees just makes sense. Whereas diversity existed under one employer in the past which allowed year-round employment by one company, that diversity is now manifested in many independent farms where peak and shorter employment periods are the norm.

It is exciting to see this proposed measure combining ideas to support the diversification of agriculture that has been the goal for over three decades. Considering the size of the vast majority of these businesses it is difficult to believe the impact of the tax credits as suggested by the tax department. **YOU ARE STRONGLY URGED TO PASS THIS MEASURE ALL THE WAY TO THE GOVERNOR'S OFFICE.**

Thank you for the opportunity to provide written comments.

**HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HI 96819**

MARCH 28, 2008

HEARING BEFORE THE
SENATE COMMITTEE ON WAYS & MEANS

TESTIMONY ON HB 2739, HD 1, SD 2
RELATING TO STATE ENTERPRISE ZONES

Chair Baker and committee members:

My name is Alan Takemoto, Executive Director, of the Hawaii Farm Bureau Federation, which is the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide.

The Hawaii Farm Bureau Federation supports HB 2739, HD 1, SD 2. We support the provision that allows agricultural businesses to continue to be qualified in the event of any natural disaster. Agricultural businesses can be completely out of production for weeks and sometimes for months with strong winds, rain, and flooding. Also allowing value added agricultural products grown in the zone may also take advantage of these tax credits provided. This will encourage more value added production and help farmers to diversify their operation.

We are concerned over the labor requirements. With the labor shortage here in Hawaii, especially for agricultural operations, it has been very difficult to hire willing laborers to work on farms. Small family farms will continue to not participate in this program if this labor requirement becomes more difficult. We support that for agricultural operations, revenues be an alternative if the farm operation cannot meet the labor requirement. With revenues as an added component, the agricultural operation will then have a realistic incentive mechanism to eventually hire more labor.

Thank you.



**Hawaii
Aquaculture
Association**

To:

THE SENATE
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON WAYS AND MEANS
Sen. Rosalyn H. Baker, Chair
Sen. Shan S. Tsutsui, Vice Chair

HEARING

DATE: Friday, March 28, 2008
TIME: 9:30 AM
PLACE: Conference Room 211, State Capitol
415 South Beretania Street

From: Ronald P. Weidenbach, President, Hawaii Aquaculture Association
Cell: 429-3147, Email: hawaiiifish@gmail.com

Re: **HB2739 H.D.1 S.D.2 - RELATING TO STATE ENTERPRISE ZONES**

Chair Baker, Vice-Chair Tsutsui, and Members of the Committee:

The Hawaii Aquaculture Association (HAA) **strongly supports the intent of HB2739 H.D.1 S.D.2** to allow agricultural businesses to continue to qualify for zone benefits in case of force majeure events, includes leased and jointly employed workers in hiring formulas, changes schedule of hiring increases, expands the factors used to determine a qualified business eligible for the tax incentives to include gross sales from agricultural products, counts value-added agricultural product retail sales towards qualification for tax credits, and disallows general excise tax exemption for agricultural product retail sales.

The HAA strongly supports the EZ program and HB2739 H.D.1 S.D.2. This legislation is urgently needed by the EZ farms recovering from the numerous force majeure events of the last two years. The HAA urges the Committee to pass of this important bill and respectfully indicates that **this is a priority bill urgently needed** by the agricultural community.

Thank you for the opportunity to testify.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Enterprise zone agricultural businesses

BILL NUMBER: HB 2739, SD-2

INTRODUCED BY: Senate Committee on Economic Development and Taxation

BRIEF SUMMARY: Adds a new section to HRS chapter 209E to provide that if an agricultural business is: (1) prevented from maintaining enterprise zone eligibility requirements; or (2) interrupted due to a force majeure event, the business located in an enterprise zone shall not be disqualified as an eligible business. The seven-year eligibility period for such business shall be extended by the duration of the force majeure event.

Amends HRS section 209E-2 to add the definition of “force majeure,” “joint employment,” and “leased employee” for purposes of the measure. Amends the definition of “full-time” employee to include leased employees and employees under a joint employment relationship and the definition of “qualified business” to include a business engaged in processing agricultural products. Defines “force majeure” as an event including, but not limited to, 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 any situation beyond the control of the agricultural business.

Amends HRS section 209E-9 to provide that a business shall be designated as a “qualified business” if the business increases its gross sales of agricultural crops or agricultural products produced in an enterprise zone by two percent annually, provided that receipts from value-added products made from crops grown in an enterprise zone and sold at retail shall count towards the gross receipt requirements.

Amends HRS section 209E-11 to provide that agricultural businesses not engaged in genetically engineered agricultural production shall not be exempt from the payment of general excise taxes on the gross proceeds of agricultural retail sales. Further stipulates that if a force majeure event exists, then the period of time shall be tolled until the force majeure event ceases.

EFFECTIVE DATE: July 1, 2034

STAFF COMMENTS: In an enterprise zone, businesses are attracted and encouraged to relocate to the zone through tax incentives, bonds, and other appropriate measures. Businesses located in an enterprise zone may claim a credit against taxes paid for a period of seven years and also allows the sale of items sold by such businesses to be exempt from the general excise tax. This measure proposes to allow an agricultural business located in an enterprise zone to maintain its eligibility requirements in the event of a force majeure and also to extend its enterprise zone benefits by the duration of the event.

While it is understandable that agricultural operations are perhaps more prone to suffer economic dislocation as a result of a natural disaster or severe weather conditions, one has to pose the question

whether or not other businesses that suffer from a force majeure should also be granted the same leniency this measure proposes? What this measure does emphasize is the inequity created by enterprise zones by handing out more favorable treatment for those located in the zone, usually at the expense of those who are not.

The proposed measure also amends the eligibility requirements of an enterprise zone to include the processing of agricultural products and businesses that increase their gross sales of agricultural crops or products as delineated. It should be remembered that in recent years, the type of businesses that have been included to receive enterprise zone benefits include call centers of disease management services, sale of wind farm generated electricity sold to a public utility, research, development and sale of genetically engineered medical, agricultural, or maritime biotechnology, etc. The proposed measure would single out another business for preferential treatment merely conferring preferences for those businesses at the expense of all other taxpayers.

It should be remembered that enterprise zones merely exacerbate what is already considered a poor climate in which to do business. Singling out specific areas of the state merely confers preferences for those businesses located within those geographic areas at the expense of all other taxpayers who are not so favored. It should be remembered that those taxpayers who live and work in the zone will demand the same public services as those who are not as fortunate to be located in the zone. Who then will pay for these services?

Concurrent efforts must be made to improve Hawaii's business climate to enhance the economic prospects for all businesses. Enterprise zones are merely an abdication of government's responsibility to create a nurturing and supportive business climate so that all businesses can thrive in Hawaii and provide the jobs the people of Hawaii need.

Finally, while Hawaii has had the enterprise zone concept on the books for years, no evaluation of how effective these zones have been in improving the well-being of those communities on which this status has been conferred. Before further corrupting the economic marketplace with added versions of the enterprise zone concept, an evaluation of the current zones should be undertaken. Instead of expanding the enterprise zone program, the program should be repealed in favor of across-the-board tax relief for all businesses in Hawaii. Indeed, has there been a comprehensive evaluation of the program and do lawmakers know exactly how much enterprise zone businesses have benefitted and whether or not they have created the jobs promised when the program was first established? If the legislature is adamant about the designation of enterprise zones in the state, then the whole state should be designated an enterprise zone and the tax treatment will be equitable for all businesses.

Digested 3/27/08

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
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**TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS
FRIDAY, MARCH 28, 2008
9:30 A.M.
Room 211**

**HOUSE BILL NO. 2739, H.D. 1, S.D. 2
RELATING TO STATE ENTERPRISE ZONES**

Chairperson Baker and Members of the Committee:

Thank you for the opportunity to comment on House Bill No. 2739, H.D. 1, S.D. 2. The purpose of this bill is to qualify agricultural businesses for enterprise zones and to allow them to receive benefits in case of a force majeure event.

The Hawaii Department of Agriculture (HDOA) supports this bill as it allows qualified agricultural businesses in the Enterprise Zone (EZ) program to remain eligible for all tax incentives while experiencing a force majeure event and also extends the seven-year eligibility period by the duration of the loss.

This bill addresses concerns raised previously by defining the term "*force majeure*" and allows agricultural producers to become eligible in the EZ program and to continue their eligibility by an increase in gross sales of two percent annually.

This measure has been discussed for the past four legislative sessions. We respectfully ask for your support to pass this bill and help more agricultural producers to participate in the EZ program.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
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SENATE COMMITTEE ON WAYS & MEANS

TESTIMONY REGARDING HB 2739 HD 1 SD 2 RELATING TO STATE ENTERPRISE ZONES

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: MARCH 28, 2008

TIME: 9:30AM

ROOM: 211

This bill would provide farmers with an alternative means of obtaining and maintaining enterprise zone (EZ) benefits.

The Joint House Committee on Economic Development & Taxation and Agriculture amended the measure by defining a "force majeure" event, among other nonsubstantive changes.

The House Committee on Finance passed this measure unamended.

The House of Representatives passed this measure on third reading.

The Senate Committee on Agriculture & Hawaiian Affairs amended the agriculture general excise tax provision of this measure to provide that entities not conducting genetically-engineered agricultural production shall not be exempt from the payment of general excise taxes.

The Senate Committee on Economic Development & Taxation made several substantive amendments to the measure.

The Department of Taxation ("Department") **supports the intent** of this bill. The Department defers to the Department of Business, Economic Development and Tourism ("DBEDT") and the Department of Agriculture regarding this bill's merits.

The State currently provides tax breaks for qualifying businesses in an Enterprise Zone. Under section 209E-11, Hawaii Revised Statutes (HRS), certain types of businesses in the enterprise zone that satisfy hiring requirements are exempt from the state general excise and use tax for up to seven years. Qualified businesses can also claim two partial state income tax credits under section 209E-10, HRS:

1. **An income tax credit based on taxes due the State.** The tax credit is equal to 80 percent of the taxes due for the first tax year, which decreases by 10 percent for each year thereafter, over the next six years;
2. **An income tax credit based on unemployment taxes paid.** The tax credit is equal to 80 percent of the unemployment taxes paid during the first year, which decreases by 10 percent for each year thereafter, over the next six years.

The Department notes that pursuant to HRS 209E-10, DBEDT has been tasked with certifying to the Department the applicability of the tax credit for a qualified business against any taxes due to the State.

This bill amends the requirements of the state enterprise zone program by:

1. Allowing the Department of Business, Economic Development, and Tourism to extend tax incentives to qualifying agricultural businesses for the duration of the effects of a *force majeure*;
2. Enabling agricultural businesses to remain eligible for the tax incentives under the Program during any period of interruption caused by a *force majeure* event;
3. Adding a definition of "force majeure event," "leased employee," and "joint employment" to HRS § 209E-2, and amends HRS § 209E-2 to include "leased employees" and "joint employees" in the definition of "full-time employees";
4. Amending HRS § 209E-10 to allow agricultural business as the only businesses that could use retail sales of value-added products from crops grown within an EZ to count toward certification for the tax credit;
5. Expanding the qualified businesses that are eligible to include those that increase gross profits from agricultural products by 2% annually;
6. Adding clarifying language to HRS § 209E-11 that an agricultural business is not exempt from general excise tax on certain gross proceeds of non-genetically engineered agricultural retail sales; and
7. Tolling the seven-year GET exemption during a *force majeure* even.

If the defective date were removed (and assuming approval before June 30, 2008) the revenue losses are estimated to be \$200,000 for fiscal year 2009, \$400,000 for fiscal year 2010, \$600,000 for fiscal year 2011 and \$550,000 per year thereafter.

It is estimated that the construction of facilities for the agricultural and processing facilities would cost \$25 million over three years, with \$5 million being incurred in the first and third years

Department of Taxation Testimony

HB 2739 HD 1 SD 2

March 28, 2008

Page 3 of 3

and \$15 million being incurred in the second year. (The figure for construction was revised downward after consulting with DBEDT. Apparently much of the construction is already in place). In the fourth year and thereafter, the facilities are assumed to generate \$50 million in gross receipts and to increase the enterprise zone tax credit by 20%. GET is foregone at the rate of 4% on the construction costs and at ½% on the gross receipts from the new agricultural and processing facilities.