

JAN 28 2009

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 in these difficult
2 economic times of lower revenues for the State and closure of
3 key businesses, government must seek ways to encourage and
4 expedite economic growth and diversity.

5 The State's enterprise zones program in the department of
6 business, economic development, and tourism, was established to
7 stimulate business and industrial growth through regulatory
8 flexibility and tax incentives in areas that are viable for
9 neighborhood revitalization.

10 The purpose of this Act is to amend chapter 209E, Hawaii
11 Revised Statutes, to:

- 12 (1) Add a definition for "eligible business activity" and
13 clarify the definitions of "qualified business" and
14 "service business";
- 15 (2) Allow limited liability companies to be qualified
16 businesses and service businesses;



- 1 (3) Extend the tax credits and exemptions for businesses
- 2 engaged in the manufacturing of tangible personal
- 3 property or in the producing or processing of
- 4 agricultural products for an additional seven years;
- 5 (4) Allow the receipts, sales, and employees of a
- 6 business's establishments in all enterprise zones
- 7 located within the same county to count toward
- 8 qualification requirements; and
- 9 (5) Delete obsolete provisions.

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

12 1. By adding a new definition to read:

13 "Eligible business activity" means the:

- 14 (1) Manufacture of tangible personal property, the
- 15 wholesale sale of tangible personal property as
- 16 discussed in section 237-4, or a service business as
- 17 defined in this section;
- 18 (2) Production of agricultural products where the business
- 19 is a producer as defined in section 237-5, or the
- 20 processing of agricultural products, all or some of
- 21 which were grown within an enterprise zone;



- 1 (3) Research, development, sale, or production of all
2 types of genetically-engineered medical, agricultural,
3 or maritime biotechnology products; or
4 (4) Production of electric power from wind energy for sale
5 primarily to a public utility company for resale to
6 the public."

7 2. By amending the definitions of "qualified business" and
8 "service business" to read:

9 "'Qualified business" means any corporation, partnership,
10 limited liability company, or sole proprietorship authorized to
11 do business in the State that is qualified under section 209E-9,
12 subject to the state corporate or individual income tax under
13 chapter 235, and is[+] engaged in an eligible business activity
14 as defined in this chapter.

15 [~~(1) Engaged in manufacturing, the wholesale sale of~~
16 ~~tangible personal property as defined in section 237-~~
17 ~~4, or a service business as defined in this chapter;~~

18 ~~(2) Engaged in producing agricultural products where the~~
19 ~~business is a producer as defined in section 237 5, or~~
20 ~~engaged in processing agricultural products, all or~~
21 ~~some of which were grown within an enterprise zone;~~



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

7 "Service business" means any corporation, partnership,
8 limited liability company, or sole proprietorship that repairs
9 ships, aircraft, or assisted technology equipment, provides
10 telecommunication services, information technology design and
11 production services, medical and health care services, or
12 education and training services as defined in this chapter."

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

15 "**§209E-4 Enterprise zone designation.** (a) The governing
16 body of any county may apply in writing to the department to
17 have an area declared to be an enterprise zone. The application
18 shall include a description of the location of the area or areas
19 in question, and a general statement identifying proposed local
20 incentives to complement the state and any federal incentives.

21 (b) The governor, upon the recommendation of the director,
22 shall approve the designation of up to six areas in each county



1 as enterprise zones for a period of twenty years. Any such area
2 shall be located in one United States census tract or two or
3 more contiguous United States census tracts in accordance with
4 the most recent decennial United States Census. The census
5 tract or tracts within which each enterprise zone is located
6 also shall meet at least one of the following criteria:

7 (1) Twenty-five per cent or more of the population have
8 incomes below eighty per cent of the median family
9 income of the county; or

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

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

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

21 SECTION 4. Section 209E-9, Hawaii Revised Statutes, is
22 amended as follows:



1 1. By amending subsections (a), (b), and (c) to read:

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

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

6 (2) During each taxable year has at least fifty per cent
7 of its enterprise zone [~~establishment's~~

8 establishments' gross receipts attributable to the
9 active conduct of trade or business within [~~the~~

10 enterprise [~~zone,~~] zones located within the same
11 county; and

12 (3) Either:

13 (A) Increases its average annual number of full-time
14 employees by at least ten per cent by the end of
15 its first tax year of participation, and during
16 each subsequent taxable year at least maintains
17 that higher level of employment; or

18 (B) Increases its gross sales of agricultural crops
19 produced, or agricultural products processed
20 within [~~the~~] enterprise [~~zone~~] zones located
21 within the same county by two per cent 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] zones located
4 within the same county and sold at retail pursuant to the limits
5 of subsection (e) shall count toward the gross receipts
6 requirement under paragraph (2).

7 (b) A business firm may also be eligible to be designated
8 a qualified business for purposes of this chapter if the
9 business:

10 (1) Is actively engaged in the conduct of a trade or
11 business of an eligible business activity in an area
12 immediately prior to [an] the area being designated an
13 enterprise zone;

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

15 (3) Either:

16 (A) Increases its average annual number of full-time
17 employees employed at the [~~business~~] business's
18 establishment or establishments [~~located~~] within
19 [~~the~~] enterprise [zone] zones located within the
20 same county by at least ten per cent by the end
21 of the first year of operation, and by at least
22 fifteen per cent by the end of each of the



1 fourth, fifth, sixth, and seventh years of
2 operation~~[7]~~, and for businesses eligible for tax
3 credits extending past the seventh year, at least
4 maintains that higher level of employment during
5 each subsequent taxable year; provided that the
6 percentage increase shall be based upon the
7 employee count at the beginning of the initial
8 year of operation within the enterprise ~~[zone7]~~
9 zone or zones; or

10 (B) Increases its gross sales of agricultural crops
11 produced, or agricultural products processed
12 within the enterprise zone by two per cent
13 annually.

14 (c) After designation ~~[as]~~ of an enterprise zone, each
15 qualified business firm in the zone shall submit annually to the
16 department an approved form supplied by the department that
17 provides the information necessary for the department to
18 determine if it may certify the applicability of the tax credits
19 and exemptions provided in this chapter for the business firm
20 ~~[qualifies as a qualified business]~~. The approved form shall be
21 submitted by each business to the governing body of the county



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

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

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~~] an enterprise zone
8 located within the same county in which the tangible personal
9 property is sold. Services shall be sold at an establishment of
10 a qualified business engaged in a service business within an
11 enterprise zone [~~and the services shall be delivered in the same~~
12 ~~enterprise zone in which sold. Any services rendered outside an~~
13 ~~enterprise zone shall not be deemed to be the services of a~~
14 ~~qualified business~~]."

15 SECTION 5. Section 209E-10, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§209E-10 State business tax credit.** (a) The department
18 shall certify annually to the department of taxation the
19 applicability of the tax credit provided in this chapter for a
20 qualified business against any taxes due the State. Except for
21 the general excise tax, the credit shall be eighty per cent of
22 the tax due for the first tax year, seventy per cent of the tax



1 due for the second tax year, sixty per cent of the tax due for
2 the third year, fifty per cent of the tax due the fourth year,
3 forty per cent of the tax due the fifth year, thirty per cent of
4 the tax due the sixth year, and twenty per cent of the tax due
5 the seventh year. For qualified businesses engaged in the
6 manufacturing of tangible personal property, or the producing or
7 processing of agricultural products, the credit shall continue
8 after the seventh year at the rate of twenty per cent of the tax
9 due for each of the subsequent seven tax years. Any tax credit
10 not usable shall not be applied to future tax years.

11 (b) When a partnership is eligible for a tax credit under
12 this section, each partner shall be eligible for the tax credit
13 provided for in this section on the partner's income tax return
14 in proportion to the amount of income received by the partner
15 from the partnership. Any qualified business having taxable
16 income from business activity, both within and without the
17 enterprise zone, shall allocate and apportion its taxable income
18 attributable to the conduct of business. Tax credits provided
19 for in this section shall only apply to taxable income of a
20 qualified business attributable to the conduct of business
21 within ~~[the]~~ enterprise ~~[zone.]~~ zones located within the same
22 county.



1 (c) In addition to any tax credit authorized under this
2 section, any qualified business shall be entitled to a tax
3 credit against any taxes due the State in an amount equal to a
4 percentage of unemployment taxes paid. The amount of the credit
5 shall be equal to eighty per cent of the unemployment taxes paid
6 during the first year, seventy per cent of the taxes paid during
7 the second year, sixty per cent of the taxes paid during the
8 third year, fifty per cent of the taxes paid during the fourth
9 year, forty per cent of the taxes paid during the fifth year,
10 thirty per cent of the taxes paid during the sixth year, and
11 twenty per cent of the taxes paid during the seventh year. For
12 qualified businesses engaged in the manufacturing of tangible
13 personal property, or the producing or processing of
14 agricultural products, the credit shall continue after the
15 seventh year in an amount equal to twenty per cent of the taxes
16 paid during each of the subsequent seven tax years.

17 (d) Tax credits provided for in subsection (c) shall only
18 apply to the unemployment tax paid on employees employed at the
19 qualified [~~business~~] business's establishment or establishments
20 [~~located~~] within [~~the~~] enterprise [~~zone~~] zones located within
21 the same county. Any tax credit not usable shall not be applied
22 to future tax years."



1 SECTION 6. Section 209E-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§209E-11 State general excise exemptions.** The department
4 shall certify annually to the department of taxation that any
5 qualified business is exempt from the payment of general excise
6 taxes on the gross proceeds from [~~the manufacture of tangible~~
7 ~~personal property, the wholesale sale of tangible personal~~
8 ~~property, the engaging in a service business by a qualified~~
9 ~~business, or the engaging in research, development, sale, or~~
10 ~~production of all types of genetically engineered medical,~~
11 ~~agricultural, or maritime biotechnology products,~~] an eligible
12 business activity as defined in this chapter; provided that
13 agricultural businesses other than those engaged in the
14 production of genetically-engineered agricultural products shall
15 not be exempt from the payment of general excise taxes on the
16 gross proceeds of agricultural retail sales. The gross proceeds
17 received by a contractor licensed under chapter 444 shall be
18 exempt from the general excise tax for construction within an
19 enterprise zone performed for a qualified business within an
20 enterprise zone[-] or a business that has been approved by the
21 department to enroll into the enterprise zone program. The
22 exemption shall extend for a period not to exceed seven years;



1 provided that for qualified businesses engaged in the
 2 manufacturing of tangible personal property, or the producing or
 3 processing of agricultural products, the exemption shall extend
 4 for a period not to exceed fourteen years; provided further that
 5 if a force majeure event occurs, then the period of time shall
 6 be tolled until the force majeure event ceases."

7 SECTION 7. Statutory material to be repealed is bracketed
 8 and stricken. New statutory material is underscored.

9 SECTION 8. This Act shall take effect on July 1, 2009.

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Report Title:

Enterprise Zone Program; Agricultural Producers and
Manufacturers

Description:

Authorizes agricultural producers and manufacturers to renew their eligibility in the enterprise zone program and allows receipts, sales, and employees of a business establishment that are located within the same county to count toward qualification. Amends definitions in section 209E-2, HRS.

