
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 enterprise zones program in the department of
6 business, economic development, and tourism was established to
7 stimulate business and industrial growth in areas viable of
8 neighborhood revitalization by means of regulatory flexibility
9 and tax incentives.

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

12 (1) Add a definition of "eligible business activity",
13 clarify the definition of "qualified business", and
14 allow limited liability companies to be qualified
15 businesses and service businesses;

16 (2) Extend the tax credits and exemptions for businesses
17 engaged in the manufacturing of tangible personal
18 property, the wholesale sale of tangible personal



1 property, or in the producing or processing of
2 agricultural products for an additional seven years;

3 (3) Allow the receipts, sales, and employees of a
4 business's establishments in all enterprise zones
5 located within the same county to count towards
6 qualification requirements; and

7 (4) Delete obsolete provisions.

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

10 1. By adding a new definition to be appropriately inserted
11 and to read:

12 ""Eligible business activity" means the:

13 (1) Manufacture of tangible personal property, the
14 wholesale sale of tangible personal property, as
15 defined in section 237-4, or a service business, as
16 defined in this chapter;

17 (2) Production of agricultural products where the business
18 is a producer, as defined in section 237-5, or the
19 processing of agricultural products, all or some of
20 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[+:

- 14 ~~(1) Engaged in manufacturing, the wholesale sale of~~
15 ~~tangible personal property as defined in section 237-~~
16 ~~4, or a service business as defined in this chapter;~~
17 ~~(2) Engaged in producing agricultural products where the~~
18 ~~business is a producer as defined in section 237-5, or~~
19 ~~engaged in processing agricultural products, all or~~
20 ~~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.] engaged in an eligible business~~
7 ~~activity as defined in this chapter.~~

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

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

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



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

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

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

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

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



1 SECTION 4. Section 209E-9, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§209E-9 Eligibility; qualified business; sale of property**
4 **or services.** (a) Any business firm may be eligible to be
5 designated a qualified business for purposes of this chapter if
6 the business:

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

9 (2) During each taxable year has at least fifty per cent
10 of its enterprise zone [~~establishment's~~
11 establishments' gross receipts attributable to the
12 active conduct of trade or business within [~~the~~
13 enterprise [~~zone;~~ zones located within the same
14 county; and

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

20 (B) Increases its gross sales of agricultural crops
21 produced, or agricultural products processed



1 within [~~the~~] enterprise [~~zone~~] zones located
2 within the same county by two per cent annually.

3 For business firms engaged in producing or processing
4 agricultural products, receipts from value-added products made
5 from crops grown within [~~an~~] enterprise [~~zone~~] zones located
6 within the same county and sold at retail pursuant to the limits
7 of subsection (e) shall count toward the gross receipts
8 requirement under paragraph (2).

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

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

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

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



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

10 (B) Increases its gross sales of agricultural crops
11 produced, or agricultural products processed
12 within ~~[the]~~ enterprise ~~[zone]~~ zones located
13 within the same county by two per cent 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 (d) The form referred to in subsection (c) shall be prima
4 facie evidence of the eligibility of a business for the purposes
5 of this section.

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

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



1 number of full-time employees at the end of its fiscal year that
2 includes September 11, 2001, as its base number of full-time
3 employees if necessary to meet the requirements of subsection
4 (a)(3) and (4) or (b)(3) in future fiscal years."

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

7 "**§209E-10 State business tax credit.** (a) The department
8 shall certify annually to the department of taxation the
9 applicability of the tax credit provided in this chapter for a
10 qualified business against any taxes due the State. Except for
11 the general excise tax, the credit shall be eighty per cent of
12 the tax due for the first tax year, seventy per cent of the tax
13 due for the second tax year, sixty per cent of the tax due for
14 the third year, fifty per cent of the tax due the fourth year,
15 forty per cent of the tax due the fifth year, thirty per cent of
16 the tax due the sixth year, and twenty per cent of the tax due
17 the seventh year. For qualified businesses engaged in the
18 manufacturing of tangible personal property, the wholesale sale
19 of tangible personal property, or the producing or processing of
20 agricultural products, the credit shall continue after the
21 seventh year at the rate of twenty per cent of the tax due for



1 each of the subsequent seven tax years. Any tax credit not
2 usable shall not be applied to future tax years.

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

15 (c) In addition to any tax credit authorized under this
16 section, any qualified business shall be entitled to a tax
17 credit against any taxes due the State in an amount equal to a
18 percentage of unemployment taxes paid. The amount of the credit
19 shall be equal to eighty per cent of the unemployment taxes paid
20 during the first year, seventy per cent of the taxes paid during
21 the second year, sixty per cent of the taxes paid during the
22 third year, fifty per cent of the taxes paid during the fourth



1 year, forty per cent of the taxes paid during the fifth year,
 2 thirty per cent of the taxes paid during the sixth year, and
 3 twenty per cent of the taxes paid during the seventh year. For
 4 qualified businesses engaged in the manufacturing of tangible
 5 personal property, the wholesale sale of tangible personal
 6 property, or the producing or processing of agricultural
 7 products, the credit shall continue after the seventh year in an
 8 amount equal to twenty per cent of the tax due for each of the
 9 subsequent seven tax years.

10 (d) Tax credits provided for in subsection (c) shall only
 11 apply to the unemployment tax paid on employees employed at the
 12 qualified business' establishment or establishments [~~located~~]
 13 within [~~the~~] enterprise [~~zone.~~] zones located within the same
 14 county. Any tax credit not usable shall not be applied to
 15 future tax years."

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

18 "**§209E-11 State general excise exemptions.** The department
 19 shall certify annually to the department of taxation that any
 20 qualified business is exempt from the payment of general excise
 21 taxes on the gross proceeds from [~~the manufacture of tangible~~
 22 ~~personal property, the wholesale sale of tangible personal~~



1 ~~property, the engaging in a service business by a qualified~~
2 ~~business, or the engaging in research, development, sale, or~~
3 ~~production of all types of genetically-engineered medical,~~
4 ~~agricultural, or maritime biotechnology products;]~~ an eligible
5 business activity as defined in this chapter; provided that
6 agricultural businesses other than those engaged in the
7 production of genetically-engineered agricultural products shall
8 not be exempt from the payment of general excise taxes on the
9 gross proceeds of agricultural retail sales. The gross proceeds
10 received by a contractor licensed under chapter 444 shall be
11 exempt from the general excise tax for construction within an
12 enterprise zone performed for a qualified business within an
13 enterprise zone[-] or a business that has been approved by the
14 department to enroll in the enterprise zone. The exemption
15 shall extend for a period not to exceed seven years; provided
16 that for qualified businesses engaged in the manufacturing of
17 tangible personal property, the wholesale sale of tangible
18 personal property, or the producing or processing of
19 agricultural products, the exemption shall extend for a period
20 not to exceed fourteen years; provided further that if a force
21 majeure event occurs, then the period of time shall be tolled
22 until the force majeure event ceases."



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

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

4

INTRODUCED BY:

Calvin M. Long

JAN 26 2009



Report Title:

Enterprise Zone Program; 7-Year Renewal for Agricultural Producers, Manufacturers, and Wholesalers

Description:

Allows agricultural producers, manufacturers and wholesalers to renew their eligibility into the enterprise zone program for an additional 7 years. Allows for the receipts, sales, and employees of a business's establishments in all enterprise zones located within the same county to count towards qualification into the enterprise program. Clarifies that limited liability companies are included as qualified businesses.

