

**CHAPTER 209E**  
**STATE ENTERPRISE ZONES**

Section

- 209E-1 Purpose
- 209E-2 Definitions
- 209E-3 Administration
- 209E-4 Enterprise zone designation
- 209E-5 Application review
- 209E-6 Repealed
- 209E-7 Government assistance; prohibition
- 209E-8 Rules
- 209E-9 Eligibility; qualified business; sale of property  
or services
- 209E-10 State business tax credit
- 209E-11 State general excise exemptions
- 209E-12 Local incentives
- 209E-13 Termination of enterprise zone
- 209E-14 Force majeure event; agricultural businesses

## Cross References

Hawaiian home lands enterprise zones, see HHCA §227.

" **§209E-1 Purpose.** It is declared that the health, safety, and welfare of the people of this State are dependent upon the continual encouragement, development, growth, and expansion of the private sector, and that there are certain areas in the State that need the particular attention of government to help attract private sector investment. Therefore, it is the purpose of this chapter to stimulate business, agricultural, and industrial growth in areas that would result in neighborhood revitalization of those areas by means of regulatory flexibility and tax incentives. [L 1986, c 78, pt of §1; am L 2008, c 143, §2]

" **§209E-2 Definitions.** As used in this chapter:

"Call center" means a business providing service at an establishment in which customer and technical support service for manufacturing companies, disease management services, computer hardware and software companies, credit collection services, product fulfillment services, or disaster management services, are provided by telephone; provided that the business shall not include telemarketing or sales.

"Department" means the department of business, economic development, and tourism.

"Director" means the director of business, economic development, and tourism.

"Disease management services" means patient self-management education services, which may include primary prevention, behavioral modification, compliance/surveillance, and routine reporting and feedback including communication with patients, physicians, health plans, or ancillary providers.

"Education and training services" means courses and programs for international business executives in business management, marketing, financial services, human resources, risk management, and for technicians in environmental sciences and remediation.

"Eligible business activity" means the:

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

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

provided that medical marijuana dispensary activities pursuant to chapter 329D shall not be considered an eligible business activity for the purposes of this chapter.

"Enterprise zone" means an area nominated by, and within the jurisdiction of, a county government, and subsequently declared by the governor to be eligible for the benefits of this chapter.

"Establishment" means a single physical location where business is conducted. A business firm may include one or more establishments, any number of which may be in the enterprise zones.

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

"Full-time employee" means any employee, including a leased employee and an employee under a joint employment arrangement, for whom the employer is legally required to provide employee fringe benefits.

"Information technology design and production services" means computer software development, imagery creation, and data compilation, but not consumer sales or service businesses.

"Joint employment" means an employment arrangement:

- (1) Between two or more employers to share an employee's services, as for example, to interchange employees;
- (2) In which one employer acts directly or indirectly in the interest of the other employer or employers in relation to the employee; or
- (3) In which two or more employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control of the other employer.

"Leased employee" means an employee under a professional employer organization arrangement who is assigned to a

particular client company on a substantially full-time basis for at least one year.

"Medical and health care services" [*Definition effective until December 31, 2016. For definition effective January 1, 2017, see below.*] means medical research, clinical trials, and telehealth, but not routine medical treatment or services.

"Medical and health care services" [*Definition effective January 1, 2017. For definition effective until December 31, 2016, see above.*] means medical research and clinical trials, but not routine medical treatment or services.

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

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

"Taxes due the State" means income taxes due under chapter 235.

"Telecommunication services" means terrestrial (copper and optical fiber cable) and satellite information delivery systems, switching systems, ground stations, and call centers, but not consumer services. [L 1986, c 78, pt of §1; am L 1988, c 141, §17; am L 1989, c 390, §1; am L 1990, c 293, §8; am L 1993, c 17, §1; am L 1995, c 91, §2; am L 1996, c 286, §1; am L 1997, c 262, §1; am L 2000, c 118, §2 and c 160, §2; am L 2002, c 122, §2; am L 2008, c 143, §3; am L 2009, c 174, §2; am L 2014, c 9, §2 and c 159, §2; am L 2016, c 226, §5 and c 230, §3]

" **[§209E-3] Administration.** The department shall administer this chapter and shall have the following powers and duties:

- (1) To establish criteria for determining what areas qualify as enterprise zones. The criteria shall be the minimum required for implementation of the purpose of this chapter;
- (2) To monitor the implementation and operation of this chapter;
- (3) To conduct a continuing evaluation program of enterprise zones;
- (4) To assist counties in obtaining the reduction of rules within enterprise zones;

- (5) To submit annual reports evaluating the effectiveness of the program and any recommendations for legislation to the governor;
- (6) To administer and enforce the rules adopted by the department; and
- (7) To administer this chapter in such a manner that the area to be designated as an enterprise zone will most benefit the area and the State. [L 1986, c 78, pt of §1]

### **Attorney General Opinions**

Department promulgated rules requiring initial survey and annual report from the participating county pursuant to its duty under paragraph (3). If extending survey and reporting requirements to new enterprise zone (EZ) created by the legislature would result in an increase in the level of service under city and county's existing program, then, unless department was willing to share in the cost, city and county was not required to submit initial survey or annual report on new EZ. Att. Gen. Op. 98-1.

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

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

- (1) Twenty-five per cent or more of the population have incomes below eighty per cent of the median family income of the county; or
- (2) The unemployment rate is 1.5 times the state average. [L 1986, c 78, pt of §1; am L 1989, c 390, §2; am L 1993, c 341, §2; am L 1995, c 91, §3; am L 1997, c 262, §2; am L 2009, c 174, §3]

### **Attorney General Opinions**

Act 262, L 1997, did not require city and county to offer county-level incentives to qualified businesses in new enterprise zone created legislatively by the Act. Att. Gen. Op. 98-1.

If extending survey and reporting requirements to new enterprise zone (EZ) created by the legislature would result in an increase in the level of service under city and county's existing program, then, unless department was willing to share in the cost, city and county was not required to submit initial survey or annual report on new EZ. Att. Gen. Op. 98-1.

Qualified businesses located in new enterprise zone (EZ) would be eligible for state tax incentives for seven-year period set forth in §§209E-10(a) and 209E-11, although a portion of that seven-year period extended beyond new EZ's five-year sunset date. Att. Gen. Op. 98-1.

Where legislature designated agricultural lands in Waialua district as an enterprise zone (EZ) in Act 262, L 1997, existing EZ at Waialua-Haleiwa was not affected because it was established prior to December 31, 1996, the retroactive effective date of the Act. Att. Gen. Op. 98-1.

" **§209E-5 Application review.** (a) The department shall review each application upon receipt and shall secure any additional information that the department deems necessary for the purpose of determining whether the area described in the application qualifies to be declared an enterprise zone.

(b) The department shall complete review of the application within sixty days of the last date designated for receipt of an application. After review of the applications, the department shall recommend to the governor within thirty days those applications with the greatest potential for accomplishing the purpose of this chapter. If an application is denied, the governing body shall be informed of that fact together with the reasons for the denial. [L 1986, c 78, pt of §1; am L 1995, c 91, §4]

" **§209E-6 REPEALED.** L 1995, c 91, §6.

" **[\$209E-7] Government assistance; prohibition.** There shall be no duplication of existing state tax incentives to qualified business firms which locate in an enterprise zone. [L 1986, c 78, pt of §1]

" **§209E-8 Rules.** Rules prescribing procedures effectuating the purpose of this chapter shall be adopted by the department in consultation with the department of taxation pursuant to chapter 91. [L 1986, c 78, pt of §1; am L 1989, c 390, §3]

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

- (1) Begins the operation of a trade or business in an eligible business activity within an enterprise zone;
- (2) During each taxable year has at least fifty per cent of its enterprise zone establishments' gross receipts attributable to the active conduct of trade or business within enterprise zones located within the same county; and
- (3) Either:
  - (A) Increases its average annual number of full-time employees employed at the business' establishment or establishments within enterprise zones located within the same county by at least ten per cent by the end of its first tax year of participation, and during each subsequent taxable year at least maintains that higher level of employment; or
  - (B) Increases its gross sales of agricultural crops produced, or agricultural products processed within enterprise zones located within the same county by two per cent annually.

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

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

- (1) Is actively engaged in the conduct of a trade or business in an eligible business activity in an area immediately prior to the area being designated an enterprise zone;
- (2) Meets the requirements of subsection (a)(2); and
- (3) Either:
  - (A) Increases its average annual number of full-time employees employed at the business' establishment or establishments within enterprise zones located within the same county by at least ten per cent by the end of the first year of operation, and by at least fifteen per cent by the end of each of the fourth, fifth, sixth, and seventh years of

operation, and for businesses eligible for tax credits extending past the seventh year, at least maintains that higher level of employment during each subsequent taxable year; provided that the percentage increase shall be based upon the employee count at the beginning of the initial year of operation within the enterprise zone or zones; or

- (B) Increases its gross sales of agricultural crops produced, or agricultural products processed within enterprise zones located within the same county by two per cent annually.

(c) After designation of an enterprise zone, each qualified business firm in the zone shall submit annually to the department an approved form supplied by the department that provides the information necessary for the department to determine if it may certify the applicability of the tax credits and exemptions provided in this chapter for the business firm. The approved form shall be submitted by each business to the governing body of the county in which the enterprise zone is located, then forwarded to the department by the governing body of the county.

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

(e) Tangible personal property shall be sold at an establishment of a qualified business within an enterprise zone and the transfer of title to the buyer of the tangible personal property shall take place in an enterprise zone located within the same county in which the tangible personal property is sold. Services shall be sold at an establishment of a qualified business engaged in a service business within an enterprise zone.

(f) For any fiscal year that includes September 11, 2001, a business may use its average annual number of full-time employees as of August 31, 2001--rather than its average annual number at the end of its fiscal year including September 11, 2001--if necessary to meet the requirements of subsection (a)(3) and (4) or (b)(3). A business may also use its average annual number of full-time employees at the end of its fiscal year that includes September 11, 2001, as its base number of full-time employees if necessary to meet the requirements of subsection (a)(3) and (4) or (b)(3) in future fiscal years. [L 1986, c 78, pt of §1; am L 1989, c 390, §4; am L 1995, c 91, §5; am L 1996, c 286, §2; am L 1997, c 262, §3; am L 2000, c 118, §3; am L 2002, c 146, §2; am L 2008, c 143, §4; am L 2009, c 174, §4]



" **§209E-10 State business tax credit.** (a) The department shall certify annually to the department of taxation the applicability of the tax credit provided in this chapter for a qualified business against any taxes due the State. Except for the general excise tax, the credit shall be eighty per cent of the tax due for the first tax year, seventy per cent of the tax due for the second tax year, sixty per cent of the tax due for the third year, fifty per cent of the tax due the fourth year, forty per cent of the tax due the fifth year, thirty per cent of the tax due the sixth year, and twenty per cent of the tax due the seventh year. For qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products, the credit shall continue after the seventh year at the rate of twenty per cent of the tax due for each of the subsequent three tax years. Any tax credit not usable shall not be applied to future tax years.

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

(c) In addition to any tax credit authorized under this section, any qualified business shall be entitled to a tax credit against any taxes due the State in an amount equal to a percentage of unemployment taxes paid. The amount of the credit shall be equal to eighty per cent of the unemployment taxes paid during the first year, seventy per cent of the taxes paid during the second year, sixty per cent of the taxes paid during the third year, fifty per cent of the taxes paid during the fourth year, forty per cent of the taxes paid during the fifth year, thirty per cent of the taxes paid during the sixth year, and twenty per cent of the taxes paid during the seventh year. For qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products, the credit shall continue after the seventh year in an amount equal to twenty per cent of the taxes paid during each of the subsequent three tax years.

(d) Tax credits provided for in subsection (c) shall only apply to the unemployment tax paid on employees employed at the qualified business' establishment or establishments within enterprise zones located within the same county. Any tax credit

not usable shall not be applied to future tax years. [L 1986, c 78, pt of §1; am L 1989, c 390, §5; am L 2009, c 174, §5]

### **Attorney General Opinions**

Qualified businesses located in new enterprise zone (EZ) would be eligible for state tax incentives for seven-year period set forth in subsection (a) and §209E-11, although a portion of that seven-year period extended beyond new EZ's five-year sunset date. Att. Gen. Op. 98-1.

" **§209E-11 State general excise exemptions.** The department shall certify annually to the department of taxation that any qualified business is exempt from the payment of general excise taxes on the gross proceeds from an eligible business activity as defined in this chapter; provided that agricultural businesses other than those engaged in the production of genetically-engineered agricultural products shall not be exempt from the payment of general excise taxes on the gross proceeds of agricultural retail sales. The gross proceeds received by a contractor licensed under chapter 444 shall be exempt from the general excise tax for construction within an enterprise zone performed for a qualified business within an enterprise zone or a business that has been approved by the department to enroll into the enterprise zone program. The exemption shall extend for a period not to exceed seven years; provided that for qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products, the exemption shall extend for a period not to exceed ten years; provided further that if a force majeure event occurs, then the period of time shall be tolled until the force majeure event ceases. [L 1986, c 78, pt of §1; am L 1989, c 390, §6; am L 1996, c 286, §3; am L 1997, c 262, §4; am L 2000, c 118, §4; am L 2002, c 146, §3; am L 2008, c 143, §5; am L 2009, c 174, §6]

### **Attorney General Opinions**

Qualified businesses located in new enterprise zone (EZ) would be eligible for state tax incentives for seven-year period set forth in §209E-10(a) and this section, although a portion of that seven-year period extended beyond new EZ's five-year sunset date. Att. Gen. Op. 98-1.

" **[§209E-12] Local incentives.** (a) In applying for designation as an enterprise zone, the applying county may propose local incentives, including, but not limited to:

- (1) Reduction of permit fees;
  - (2) Reduction of user fees; and
  - (3) Reduction of real property taxes.
- (b) The application also may contain proposals for regulatory flexibility, including, but not limited to:
- (1) Special zoning districts;
  - (2) Permit process reform;
  - (3) Exemptions from local ordinances; and
  - (4) Other public incentives proposed in the locality's application, which shall be binding upon the locality upon designation of the enterprise zone. [L 1986, c 78, pt of §1]

### **Attorney General Opinions**

Where new enterprise zone (EZ) was created legislatively by Act 262, L 1997, the Act did not require city and county to offer county-level incentives to qualified businesses in the new EZ. Att. Gen. Op. 98-1.

" **[\$209E-13] Termination of enterprise zone.** Upon designation of an area as an enterprise zone, the proposals for regulatory flexibility, tax incentives, and other public incentives specified in this chapter shall be binding upon the county governing body to the extent and for the period of time specified in the application for zone designation. If the county governing body is unable or unwilling to provide any of the incentives set forth in section 209E-12 or other incentives acceptable to the department, the enterprise zone shall terminate. Qualified businesses located in the enterprise zone shall be eligible to receive the state tax incentives provided by this chapter even though the zone designation has terminated. No business may become a qualified business after the date of zone termination. The county governing body may amend its application with the approval of the department; provided the county governing body proposes an incentive equal to or superior to the unamended application. [L 1986, c 78, pt of §1]

### **Attorney General Opinions**

Qualified businesses located in new enterprise zone (EZ) would be eligible for state tax incentives for seven-year period set forth in §§209E-10(a) and 209E-11, although a portion of that seven-year period extended beyond new EZ's five-year sunset date. Att. Gen. Op. 98-1.

Where new enterprise zone (EZ) was created legislatively by Act 262, L 1997, the Act did not require city and county to

offer county-level incentives to qualified businesses in the new EZ. Att. Gen. Op. 98-1.

" **[\$209E-14] Force majeure event; agricultural businesses.**

If a business engaged in agricultural production or processing is:

- (1) Wholly or partially prevented from maintaining eligibility requirements under section 209E-9; or
- (2) Interrupted,

by reason of or through any force majeure event, then the business shall not be disqualified under this chapter. The business shall remain eligible for all tax incentives under this chapter during any period of time while experiencing conditions under paragraph (1) or (2) caused by a force majeure event, and the seven-year eligibility period shall be extended by an equivalent period of time. The business shall be as prompt and diligent as practicable in providing the department with notice of a force majeure event or of any situation that may lead to a force majeure event. [L 2008, c 143, §1]