

ACT 78

S.B. NO. 2095-86

A Bill for an Act Relating to Enterprise Zones.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
STATE ENTERPRISE ZONES**

§ -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 and industrial growth in areas which would result in neighborhood revitalization of those areas by means of regulatory flexibility and tax incentives.

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

“Business” means any entity authorized to do business in the State and subject to the state income tax on net corporate rate income, or a public service company subject to tax under chapter 239, or a financial institution subject to tax under chapter 241, or a partnership or sole proprietorship.

“Department” means the department of planning and economic development.

"Director" means the director of planning and economic development.

"Enterprise zone" means an area declared by the governor to be eligible for the benefits of this chapter.

"Taxes due the State" means:

- (1) In the case of a corporation, partnership, or sole proprietorship, income taxes due under chapter 235;
- (2) In the case of a public service company, tax due under chapter 239;
- (3) In the case of a financial institution, tax due under chapter 241.

§ -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.

§ -4 Enterprise zone designation. (a) The governing body of any county may make written application 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 shall approve, upon the recommendation of the director, the designation of up to six areas in each county as enterprise zones for a period of twenty years. Not more than four zones shall be designated during the first year after the effective date of this chapter. Any such area shall consist of contiguous United States census tracts in accordance with the 1980 United States Census. Any such area also shall meet at least one of the following criteria:

- (1) Twenty-five per cent or more of the population of the area shall have incomes below eighty per cent of the median income of the county, or
- (2) An unemployment rate 1.5 times the state average.

§ -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.

(c) If any portion of an area designated as an enterprise zone under this chapter is included in an area designated as an enterprise zone by an agency of

the federal government, the area designated under this chapter shall be enlarged to include the area designated by the federal agency.

§ -6 Sale or lease of public land. Upon designation of an area as an enterprise zone, the State and any agency of a political subdivision that own any land within the enterprise zone may make available for sale, or lease, under appropriate law, all land within the enterprise zone not designated or targeted for some public use, with the condition that it be developed.

§ -7 Government assistance; prohibition. There shall be no duplication of existing state tax incentives to qualified business firms which locate in an enterprise zone.

§ -8 Rules. Rules prescribing procedures effectuating the purpose of this chapter shall be adopted by the department pursuant to chapter 91.

§ -9 Eligibility. (a) Any business firm may be designated a "qualified business" for purposes of this chapter if the business:

- (1) Begins the operation of a trade or business within an enterprise zone;
 - (2) During each taxable year has at least fifty per cent of the business' gross receipts attributable to the active conduct of trade or business within the enterprise zone; and
 - (3) Forty per cent or more of the employees employed at the business' establishment or establishments located within the enterprise zone meet the criteria set forth in section -4(b)(1) prior to employment.
- (b) A business also may 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 area immediately prior to an area being designated an enterprise zone;
 - (2) Meets the requirements of subsection (a)(2); and
 - (3) Increases the average number of full-time employees employed at the business' establishment or establishments located within the enterprise zone by at least ten per cent over the preceding year's employment with not less than forty per cent of the increase being employees meeting the criteria of section -4(b)(1) prior to employment.

(c) After designation as an enterprise zone, each qualified business firm in the zone shall submit annually to the department a statement requesting one or more of the tax incentives provided in this chapter. The statement shall be accompanied by an approved form supplied by the department and completed by an independent certified public accountant licensed by the State which states that the business firm meets the definition of a "qualified business". A copy of the statement submitted by each business to the department shall be forwarded to the governing body of the county in which the enterprise zone is located.

(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.

§ -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. 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 individual income tax 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 the enterprise zone.

(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.

(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 located within the enterprise zone. Any tax credit not usable shall not be applied to future tax years.

§ -11 State general excise tax 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 all items sold by a qualified business in the enterprise zone. The exemption shall extend for a period not to exceed seven years.

§ -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.

§ -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 -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

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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.”

SECTION 2. This Act shall take effect upon its approval.

(Approved April 22, 1986.)