

JAN 22 2007

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 agriculture in
2 Hawaii is a vital component of Hawaii's economy. It provides
3 the State with export products, a diversity of employment
4 opportunities, a stage for tourism, and an opportunity for land
5 and water stewardship. The legislature also finds that to
6 encourage further economic development in economically
7 distressed rural areas, agriculture must be given the chance to
8 prosper, especially small family farms. While thousands of
9 acres of agricultural land lie idle, new and existing
10 agricultural ventures must be encouraged to expand and develop.
11 More incentives must be provided to give agricultural
12 entrepreneurs the opportunity to build long-lasting businesses
13 in Hawaii.

14 The legislature further finds that the state enterprise
15 zone program is one method that provides business incentives to
16 encourage agricultural activity. However, employment
17 requirements to qualify for this program discourage many
18 agricultural businesses, especially smaller farms, from applying

1 or qualifying. While agricultural businesses are confronted by
2 challenges similar to those faced by other small businesses,
3 agricultural businesses labor under unique circumstances that
4 compound the complexity of building a successful business.
5 Agricultural employment is dependent on local and global
6 markets, seasonal crops, labor availability, and weather
7 conditions. It is very difficult for smaller agricultural
8 businesses to meet the existing employment requirements of the
9 state enterprise zone program. Therefore, the legislature
10 recognizes that action needs to be taken to allow more
11 agricultural businesses the opportunity to participate in the
12 state enterprise zone program.

13 The purpose of this Act is to address the unique
14 circumstances of agricultural businesses under the enterprise
15 zone program by:

- 16 (1) Establishing that agricultural businesses shall remain
17 eligible for tax incentives in the event of force
18 majeure events, which affect their operations;
- 19 (2) Allowing agricultural businesses to meet annual gross
20 revenue requirements if the businesses are unable to
21 meet annual full-time employee requirements;

- 1 (3) Clarifying the definition of "full-time employee" by
- 2 including leased employees and employees under a joint
- 3 employer relationship; and
- 4 (4) Clarifying that the taxpayer claiming a tax credit or
- 5 exemption under chapter 209E, Hawaii Revised Statutes,
- 6 may not claim any other tax credit or exemption, under
- 7 any other law, that is identical to the claimed tax
- 8 credit or tax exemption.

9 SECTION 2. Chapter 209E, Hawaii Revised Statutes, is
10 amended by adding two new sections to be appropriately
11 designated and to read as follows:

12 "§209E- Agricultural business; extension of tax
13 incentives. The department shall extend all tax incentives
14 provided under this chapter to existing qualified agricultural
15 businesses for no more than the number of months of a force
16 majeure event that affected their operations.

17 §209E- Force majeure event; agricultural businesses. If
18 an agricultural business is:

- 19 (1) Wholly or partially prevented from maintaining
- 20 eligibility requirements under section 209E-9; or
- 21 (2) Interrupted, by reason of or through any force majeure
- 22 event, then the agricultural business shall not be

1 disqualified under this chapter. The agricultural
2 business shall remain eligible for all tax incentives
3 under this chapter during any period caused by a force
4 majeure event, and the seven-year eligibility period
5 shall be extended by the number of months of the force
6 majeure event. The agricultural business shall be as
7 prompt and diligent as practicable in providing the
8 department with notice of a force majeure event or of
9 any situation that may lead to a force majeure event."

10 SECTION 3. Section 209E-1, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~+~~ §209E-1~~+~~ Purpose. It is declared that the health,
13 safety, and welfare of the people of this State are dependent
14 upon the continual encouragement, development, growth, and
15 expansion of the private sector~~-~~ and that there are certain
16 areas in the State that need the particular attention of
17 government to help attract private sector investment.
18 Therefore, it is the purpose of this chapter to stimulate
19 business, agriculture, and industrial growth in areas [which]
20 that would result in neighborhood revitalization of those areas
21 by means of regulatory flexibility and tax incentives."

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

3 (1) By adding three new definitions to be appropriately
4 inserted and to read as follows:

5 "Agricultural business" means any corporation, partnership,
6 or sole proprietorship authorized to do business in the State
7 qualified under section 209E-9, subject to the state corporate
8 or individual income tax under chapter 235, and engaged in
9 producing those agricultural products pursuant to section 237-5
10 or processing agricultural products.

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

19 "Joint employer" means:

20 (1) Where there is an arrangement between the employers to
21 share the employee's services, as for example, to
22 interchange employees;

1 (2) Where one employer is acting directly or indirectly in
2 the interest of the other employer or employers in
3 relation to the employee; or

4 (3) Where the employers are not completely disassociated
5 with respect to the employment of a particular
6 employee and may be deemed to share control of the
7 employee, directly or indirectly, by reason of the
8 fact that one employer controls, is controlled by, or
9 is under common control with the other employer.

10 "Leased employee" means an employee under a professional
11 employment organization arrangement who is assigned to a client
12 company on a substantially full-time basis for at least one
13 year."

14 (2) By amending the definition of "full-time employee" to
15 read as follows:

16 "Full-time employee" means any employee, including leased
17 employees and employees under a joint employer relationship, for
18 whom the employer is legally required to provide employee fringe
19 benefits."

20 SECTION 5. Section 209E-4, Hawaii Revised Statutes, is
21 amended to read as follows:

1 "§209E-4 Enterprise zone designation. (a) The governing
2 body of any county may apply in writing to the department to
3 have an area declared to be an enterprise zone. The application
4 shall include a description of the location of the area or areas
5 in question, and a general statement identifying proposed local
6 incentives to complement the state and any federal incentives.

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

15 (1) Twenty-five per cent or more of the population have
16 incomes below eighty per cent of the median family
17 income of the county; or

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

19 ~~[(c) Notwithstanding subsection (b), census tract #405~~
20 ~~within the county of Kauai shall be eligible for designation as~~
21 ~~an enterprise zone. The eligibility for designation shall~~

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1 ~~remain in effect until January 1, 1997, unless the governor~~
2 ~~earlier determines that the eligibility is no longer necessary.~~

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

8 SECTION 6. Section 209E-7, Hawaii Revised Statutes, is
9 amended to read as follows:

10 " ~~[+] §209E-7 [.] Government assistance; prohibition. [There~~
11 ~~shall be no duplication of existing state tax incentives to~~
12 ~~qualified business firms which locate in an enterprise zone.]~~
13 If any tax credit or tax exemption is claimed under this
14 chapter, the taxpayer claiming that tax credit or tax exemption
15 may not claim any other tax credit or tax exemption, under any
16 other law, that is identical to the claimed tax credit or tax
17 exemption."

18 SECTION 7. Section 209E-9, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§209E-9 Eligibility; qualified business; sale of property
21 or services. (a) Any business [firm] may be eligible to be

1 designated a qualified business for purposes of this chapter if
2 the business:

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

5 (2) During each taxable year has at least fifty per cent
6 of its enterprise zone establishment's gross receipts
7 attributable to the active conduct of trade or
8 business within the enterprise zone;

9 (3) Increases its average annual number of full-time
10 employees by at least ten per cent by the end of its
11 first tax year of participation; provided that if an
12 agricultural business is unable to achieve the
13 required increase in its average annual number of
14 full-time employees, the requirement to increase
15 employment shall be replaced by a requirement to
16 increase its cumulative average annual gross revenues
17 by at least two per cent by the end of the first tax
18 year of participation; and

19 (4) During each subsequent taxable year, at least
20 maintains that higher level of employment[-] or gross
21 revenues pursuant to paragraph (3).

1 (b) A business [~~firm~~] also may be eligible to be
2 designated a qualified business for purposes of this chapter if
3 the business:

4 (1) Is actively engaged in the conduct of a trade or
5 business in an area immediately prior to an area being
6 designated an enterprise zone;

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

8 (3) Increases its average annual number of full-time
9 employees employed at the business' establishment or
10 establishments located within the enterprise zone by
11 at least ten per cent annually[-]; provided that, if
12 an agricultural business is unable to achieve the
13 required increase in its average annual number of
14 full-time employees, the requirement to increase
15 employment shall be replaced by a requirement to
16 increase its cumulative average annual gross revenues
17 by at least two per cent by the end of the first tax
18 year of participation.

19 (c) After designation as an enterprise zone, each
20 qualified business [~~firm~~] in the zone shall submit annually to
21 the department an approved form supplied by the department that
22 provides the information necessary for the department to

1 determine if the business [~~firm~~] qualifies as a qualified
2 business. The approved form shall be submitted by each business
3 to the governing body of the county in which the enterprise zone
4 is located, then forwarded to the department by the governing
5 body of the county.

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

9 (e) Tangible personal property shall be sold at an
10 establishment of a qualified business within an enterprise zone
11 and the transfer of title to the buyer of the tangible personal
12 property shall take place in the same enterprise zone in which
13 the tangible personal property is sold. Services shall be sold
14 at an establishment of a qualified business engaged in a service
15 business within an enterprise zone, and the services shall be
16 delivered in the same enterprise zone in which they are sold.
17 Any services rendered outside an enterprise zone shall not be
18 deemed to be the services of a qualified business.

19 (f) For any fiscal year that includes September 11, 2001,
20 a business may use its average annual number of full-time
21 employees as of August 31, 2001--rather than its average annual
22 number at the end of its fiscal year including

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

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

10 SECTION 9. This Act shall take effect on July 1, 2007,
11 except that sections 2, 4, and 7 shall apply to taxable years
12 beginning after December 31, 2006.

13
14 INTRODUCED BY: _____

15 BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO STATE ENTERPRISE ZONES.

PURPOSE: To provide farmers alternative means of obtaining enterprise zone benefits given the difficulty in meeting existing rigid criteria. To allow farmers who suffer economic losses from force majeure events to drop out of the enterprise zone program for the period of the loss and gain a month-for-month extension of their overall 84-month enterprise zone eligibility. To clarify that the definition of a full-time employee includes leased employees and employees under a joint employer relationship. To clarify that tax credits taken in the enterprise zone program cannot be duplicated in other tax incentive programs. To delete two obsolete sections of the statute.

MEANS: Add new sections to chapter 209E and amend sections 209E-1, 209E-2, 209E-4, 209E-7, and 209E-9, Hawaii Revised Statutes.

JUSTIFICATION: Since adoption, the enterprise zone statute has required eligible businesses to meet stringent hiring requirements each participation year to qualify for general excise tax and income tax incentives. Many agricultural operations are seasonal and unable to meet these criteria. Thus many farmers do not participate in the program although they need the tax incentives to ensure viability in the early years of their operation. Using revenue growth as an alternative measure of enterprise zone qualification will allow more farmers to participate and meet the program objectives of providing incentives for

small businesses located in distressed rural areas.

From time to time farmers suffer economic losses from drought, floods, fires, or other "force majeure" events and are unable to retain their workforce or grow their revenue. Allowing them to drop out of enterprise zone participation for a defined period of time until this event has ended and then continue for the same number of months after what would have been the end of their 84-months of participation provides an economic remedy.

The current definition of "full-time employee" in chapter 209E does not recognize the growing use of leased employees or employees working under a "joint employer" relationship. Amending that definition to include "leased employee" as defined in an added definition based on section 414(n)(2), Internal Revenue Code, will recognize this modern method of human resource management.

When adopted in 1986, the enterprise zone program was one of a very few general excise tax and income tax incentive programs. Since that time, a number of other programs have been enacted that could allow claims for the same tax credits or exemptions. Adding language consistent with that in other tax incentive statutes will clarify this provision.

Two sections of the statute are obsolete in that they refer to actions to be taken in 1997 and 2002, respectively. Deleting them will clarify the law and remove the confusion their continued inclusion has caused.

Impact on the public: Agricultural businesses will have an alternate means of qualifying for benefits. Firms using leased employees and employees under a

joint employer relationship will be eligible to participate.

Impact on the department and other agencies: No significant impact on the Department of Business, Economic Development, and Tourism. The Department of Agriculture will certify a "force majeure" event as they now do for economic disaster events. The Department of Taxation would determine the revenue.

GENERAL FUND: Minimal revenue impact.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BED-100.

OTHER AFFECTED
AGENCIES: Department of Agriculture and Department of Taxation.

EFFECTIVE DATE: Effective July 1, 2007 but certain sections would apply to taxable years beginning after December 31, 2006.