



GOV. MSG. NO. **797**

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 10, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on July 10, 2009, the following bill was signed into law:

SB1248 SD1 HD1 CD1

A BILL FOR AN ACT  
RELATING TO STATE ENTERPRISE ZONES.  
**ACT 174 (09)**

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

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# 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:

- 11 (1) Add a definition of "eligible business activity" and  
12 clarify the definitions of "qualified business" and  
13 "service business";
- 14 (2) Allow limited liability companies to be qualified  
15 businesses and service businesses;
- 16 (3) Extend the tax credits and exemptions for businesses  
17 engaged in the manufacturing of tangible personal



1 property or in the producing or processing of  
2 agricultural products under section 209E-10, Hawaii  
3 Revised Statutes, for an additional three years;

4 (4) Limit the general excise tax exemption for qualified  
5 businesses engaged in the production of genetically-  
6 engineered agricultural products under section 209E-  
7 11, Hawaii Revised Statutes, to a total of ten years;

8 (5) Allow the receipts, sales, and employees of a  
9 business's establishments in all enterprise zones  
10 located within the same county to count toward  
11 qualification requirements; and

12 (6) Delete obsolete provisions.

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

15 1. By adding a new definition to read:

16 "Eligible business activity" means the:

17 (1) Manufacture of tangible personal property, the  
18 wholesale sale of tangible personal property as  
19 described in section 237-4, or a service business as  
20 defined in this section;

21 (2) Production of agricultural products where the business  
22 is a producer as defined in section 237-5, or the



1           processing of agricultural products, all or some of  
2           which were grown within an enterprise zone;

3           (3) Research, development, sale, or production of all  
4           types of genetically-engineered medical, agricultural,  
5           or maritime biotechnology products; or

6           (4) Production of electric power from wind energy for sale  
7           primarily to a public utility company for resale to  
8           the public."

9           2. By amending the definitions of "qualified business" and  
10 "service business" to read:

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

17           ~~[-(1) Engaged in manufacturing, the wholesale sale of~~  
18           ~~tangible personal property as defined in section 237-~~  
19           ~~4, or a service business as defined in this chapter;~~

20           ~~(2) Engaged in producing agricultural products where the~~  
21           ~~business is a producer as defined in section 237-5, or~~



1 ~~engaged in processing agricultural products, all or~~  
2 ~~some of which were grown within an enterprise zone,~~  
3 ~~(3) Engaged in research, development, sale, or production~~  
4 ~~of all types of genetically engineered medical,~~  
5 ~~agricultural, or maritime biotechnology products; or~~  
6 ~~(4) Engaged in producing electric power from wind energy~~  
7 ~~for sale primarily to a public utility company for~~  
8 ~~resale to the public.]~~

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

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

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

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

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

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

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

10 establishments' gross receipts attributable to the  
11 active conduct of trade or business within [~~the~~]

12 enterprise [~~zone,~~] zones located within the same  
13 county; and

14 (3) Either:

15 (A) Increases its average annual number of full-time  
16 employees employed at the business's  
17 establishment or establishments within enterprise  
18 zones located within the same county by at least  
19 ten per cent by the end of its first tax year of  
20 participation, and during each subsequent taxable  
21 year at least maintains that higher level of  
22 employment; or



1 (B) Increases its gross sales of agricultural crops  
2 produced, or agricultural products processed  
3 within [~~the~~] enterprise [~~zone~~] zones located  
4 within the same county by two per cent annually.

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

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

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

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

19 (3) Either:

20 (A) Increases its average annual number of full-time  
21 employees employed at the [~~business~~] business's  
22 establishment or establishments [~~located~~] within





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

14          (B) Increases its gross sales of agricultural crops  
15          produced, or agricultural products processed  
16          within ~~[the enterprise zone]~~ enterprise zones  
17          located within the same county by two per cent  
18          annually.

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



1 determine if it may certify the applicability of the tax credits  
2 and exemptions provided in this chapter for the business firm  
3 ~~[qualifies as a qualified business]~~. The approved form shall be  
4 submitted by each business to the governing body of the county  
5 in which the enterprise zone is located, then forwarded to the  
6 department by the governing body of the county."

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

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

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

21 "**§209E-10 State business tax credit.** (a) The department  
22 shall certify annually to the department of taxation the



1 applicability of the tax credit provided in this chapter for a  
2 qualified business against any taxes due the State. Except for  
3 the general excise tax, the credit shall be eighty per cent of  
4 the tax due for the first tax year, seventy per cent of the tax  
5 due for the second tax year, sixty per cent of the tax due for  
6 the third year, fifty per cent of the tax due the fourth year,  
7 forty per cent of the tax due the fifth year, thirty per cent of  
8 the tax due the sixth year, and twenty per cent of the tax due  
9 the seventh year. For qualified businesses engaged in the  
10 manufacturing of tangible personal property or the producing or  
11 processing of agricultural products, the credit shall continue  
12 after the seventh year at the rate of twenty per cent of the tax  
13 due for each of the subsequent three tax years. Any tax credit  
14 not usable shall not be applied to future tax years.

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



1 for in this section shall only apply to taxable income of a  
2 qualified business attributable to the conduct of business  
3 within ~~[the]~~ enterprise ~~[zone-]~~ zones located within the same  
4 county.

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

21 (d) Tax credits provided for in subsection (c) shall only  
22 apply to the unemployment tax paid on employees employed at the



1 qualified [~~business~~] business's establishment or establishments  
2 [~~located~~] within [~~the~~] enterprise [~~zone~~] zones located within  
3 the same county. Any tax credit not usable shall not be applied  
4 to future tax years."

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

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



1 enterprise zone performed for a qualified business within an  
2 enterprise zone [-] or a business that has been approved by the  
3 department to enroll into the enterprise zone program. The  
4 exemption shall extend for a period not to exceed seven years;  
5 provided that for qualified businesses engaged in the  
6 manufacturing of tangible personal property or the producing or  
7 processing of agricultural products, the exemption shall extend  
8 for a period not to exceed ten years; provided further that if a  
9 force majeure event occurs, then the period of time shall be  
10 tolled until the force majeure event ceases."

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

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

APPROVED this 10 day of JUL, 2009

  
GOVERNOR OF THE STATE OF HAWAII