

JAN 25 2012

S.B. NO. 3065

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# A BILL FOR AN ACT

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RELATING TO AEROSPACE HIGH TECHNOLOGY DISTRICTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Chapter 205, Hawaii Revised Statutes, is  
2       amended by adding a new section to part I to be appropriately  
3       designated and to read as follows:  
4       "§205-       Petition for establishment of aerospace high  
5       technology districts.   The department of business, economic  
6       development, and tourism shall designate areas that should be  
7       classified as aerospace high technology districts, including but  
8       not limited to the pacific international space center for  
9       exploration systems and shall petition the land use commission  
10       under section 205-4 for amendment of boundaries of any land use  
11       district or districts as necessary to establish the aerospace  
12       high technology districts. The first petition by the department  
13       of business, economic development, and tourism shall be made no  
14       later than January 1, 2013. Subsequent petitions may be made at  
15       the discretion of the department.

16       This section shall not prohibit any other public agency or  
17       private person from petitioning the land use commission to



1 establish or amend the boundaries of a aerospace high technology  
2 district.

3 Anything in this section to the contrary notwithstanding,  
4 the areas defined as TMK 1-6-3, parcels 78 and 90; TMK 1-6-146,  
5 parcels 1-57; TMK 1-6-148, parcels 1-38; TMK 1-6-151, parcels 1-  
6 21; and TMK 9-3-1, parcels 2,6,9, and 10, are designated  
7 aerospace high technology districts."

8 SECTION 2. Chapter 269, Hawaii Revised Statutes, is  
9 amended by adding a new section to part I to be appropriately  
10 designated and to read as follows:

11 **"§269- Producing geothermal energy in aerospace high**  
12 **technology districts.** The public utilities commission shall  
13 open a geothermal energy docket to implement the mandate set  
14 forth in subsection 205-5.1(a) that geothermal energy generated  
15 within an aerospace high technology district be provided to any  
16 aerospace high technology facilities within the district at no  
17 cost."

18 SECTION 3. Section 205-2, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 **"§205-2 Districting and classification of lands. (a)**  
21 **There shall be [four] five major land use districts in which all**  
22 **lands in the State shall be placed: urban, rural, agricultural,**



1 ~~[and]~~ conservation~~[,]~~, and aerospace high technology. The land  
2 use commission shall group contiguous land areas suitable for  
3 inclusion in one of these ~~[four]~~ five major districts. The  
4 commission shall set standards for determining the boundaries of  
5 each district~~[,]~~; provided that:

6 (1) In the establishment of boundaries of urban districts  
7 those lands that are now in urban use and a sufficient  
8 reserve area for foreseeable urban growth shall be  
9 included;

10 (2) In the establishment of boundaries for rural  
11 districts, areas of land composed primarily of small  
12 farms mixed with very low density residential lots,  
13 which may be shown by a minimum density of not more  
14 than one house per one-half acre and a minimum lot  
15 size of not less than one-half acre shall be included,  
16 except as herein provided;

17 (3) In the establishment of the boundaries of agricultural  
18 districts the greatest possible protection shall be  
19 given to those lands with a high capacity for  
20 intensive cultivation; ~~[and]~~

21 (4) In the establishment of the boundaries of conservation  
22 districts, the "forest and water reserve zones"



1 provided in Act 234, section 2, Session Laws of Hawaii  
2 1957, are renamed "conservation districts" and,  
3 effective as of July 11, 1961, the boundaries of the  
4 forest and water reserve zones theretofore established  
5 pursuant to Act 234, section 2, Session Laws of Hawaii  
6 1957, shall constitute the boundaries of the  
7 conservation districts; provided that thereafter the  
8 power to determine the boundaries of the conservation  
9 districts shall be in the commission[-]; and

10 (5) In the establishment of the boundaries of aerospace  
11 high technology districts, the commission shall  
12 include areas of land:

13 (A) That may be used by persons for aerospace high  
14 technology development;

15 (B) On which there is no existing residential use or,  
16 if there is existing residential use, the  
17 residential use is a nonconforming use under  
18 section 205-8, authorized by special permit under  
19 section 205-6, or a permissible farm dwelling in  
20 an agricultural district; and

21 (C) That are not intensely cultivated.



1 In establishing the boundaries of the districts in each county,  
2 the commission shall give consideration to the master plan or  
3 general plan of the county.

4 (b) Urban districts shall include activities or uses as  
5 provided by ordinances or regulations of the county within which  
6 the urban district is situated.

7 (c) Rural districts shall include activities or uses as  
8 characterized by low density residential lots of not more than  
9 one dwelling house per one-half acre, except as provided by  
10 county ordinance pursuant to section 46-4(c), in areas where  
11 "city-like" concentration of people, structures, streets, and  
12 urban level of services are absent, and where small farms are  
13 intermixed with low density residential lots except that within  
14 a subdivision, as defined in section 484-1, the commission for  
15 good cause may allow one lot of less than one-half acre, but not  
16 less than ~~[18,500]~~ eighteen thousand five hundred square feet,  
17 or an equivalent residential density, within a rural subdivision  
18 and permit the construction of one dwelling on such lot~~[7]~~<sub>7</sub>;  
19 provided that all other dwellings in the subdivision shall have  
20 a minimum lot size of one-half acre or 21,780 square feet. Such  
21 petition for variance may be processed under the special permit  
22 procedure. These districts may include contiguous areas which



1 are not suited to low density residential lots or small farms by  
2 reason of topography, soils, and other related characteristics.  
3 Rural districts shall also include golf courses, golf driving  
4 ranges, and golf-related facilities.

5 (d) Agricultural districts shall include:

6 (1) Activities or uses as characterized by the cultivation  
7 of crops, crops for bioenergy, orchards, forage, and  
8 forestry;

9 (2) Farming activities or uses related to animal husbandry  
10 and game and fish propagation;

11 (3) Aquaculture, which means the production of aquatic  
12 plant and animal life within ponds and other bodies of  
13 water;

14 (4) Wind generated energy production for public, private,  
15 and commercial use;

16 (5) Biofuel production, as described in section  
17 205-4.5(a)(15), for public, private, and commercial  
18 use;

19 (6) Solar energy facilities; provided that:

20 (A) This paragraph shall apply only to land with soil  
21 classified by the land study bureau's detailed



land classification as overall (master)  
productivity rating class B, C, D or E; and  
(B) Solar energy facilities placed within land with  
soil classified as overall productivity rating  
class B or C shall not occupy more than ten per  
cent of the acreage of the parcel, or twenty  
acres of land, whichever is lesser;

(7) Bona fide agricultural services and uses that support  
the agricultural activities of the fee or leasehold  
owner of the property and accessory to any of the  
above activities, regardless of whether conducted on  
the same premises as the agricultural activities to  
which they are accessory, including farm dwellings as  
defined in section 205-4.5(a)(4), employee housing,  
farm buildings, mills, storage facilities, processing  
facilities, agricultural-energy facilities as defined  
in section 205-4.5(a)(16), vehicle and equipment  
storage areas, roadside stands for the sale of  
products grown on the premises, and plantation  
community subdivisions as defined in section  
205-4.5(a)(12);

(8) Wind machines and wind farms;



1           (9) Small-scale meteorological, air quality, noise, and  
2           other scientific and environmental data collection and  
3           monitoring facilities occupying less than one-half  
4           acre of land; provided that these facilities shall not  
5           be used as or equipped for use as living quarters or  
6           dwellings;

7           (10) Agricultural parks;

8           (11) Agricultural tourism conducted on a working farm, or a  
9           farming operation as defined in section 165-2, for the  
10          enjoyment, education, or involvement of visitors;  
11          provided that the agricultural tourism activity is  
12          accessory and secondary to the principal agricultural  
13          use and does not interfere with surrounding farm  
14          operations; and provided further that this paragraph  
15          shall apply only to a county that has adopted  
16          ordinances regulating agricultural tourism under  
17          section 205-5; and

18          (12) Open area recreational facilities.

19   Agricultural districts shall not include golf courses and golf  
20   driving ranges, except as provided in section 205-4.5(d).

21   Agricultural districts include areas that are not used for, or





1 that are not suited to, agricultural and ancillary activities by  
2 reason of topography, soils, and other related characteristics.

3 (e) Conservation districts shall include areas necessary  
4 for protecting watersheds and water sources; preserving scenic  
5 and historic areas; providing park lands, wilderness, and beach  
6 reserves; conserving indigenous or endemic plants, fish, and  
7 wildlife, including those which are threatened or endangered;  
8 preventing floods and soil erosion; forestry; open space areas  
9 whose existing openness, natural condition, or present state of  
10 use, if retained, would enhance the present or potential value  
11 of abutting or surrounding communities, or would maintain or  
12 enhance the conservation of natural or scenic resources; areas  
13 of value for recreational purposes; other related activities;  
14 and other permitted uses not detrimental to a multiple use  
15 conservation concept.

16 (f) Aerospace high technology districts shall include  
17 aerospace, processing, manufacturing, research, or instructional  
18 enterprises for aerospace high technology, commercial or  
19 experimental rocketry, satellite, lunar, nextgen avionics, solid  
20 waste resource recovery systems, enterprises for the  
21 development, processing, or transmission of alternative energy,  
22 industrial parks under chapter 206M, retail, including food



1 serving establishments, and wholesale, industrial, processing,  
2 transportation, or manufacturing enterprises the primary purpose  
3 of which is to serve or provide products to the aerospace high  
4 technology enterprises or their employees.

5 (g) For the purpose of this section:

6 "Alternative energy" means energy derived other than from  
7 the processing of petroleum.

8 "High technology" includes computer software and hardware,  
9 microprocessors, telecommunication devices, and robotics."

10 SECTION 4. Section 205-5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§205-5 Zoning.** (a) Except as herein provided, the  
13 powers granted to counties under section 46-4 shall govern the  
14 zoning within the districts, other than in conservation  
15 districts. Conservation districts shall be governed by the  
16 department of land and natural resources pursuant to chapter  
17 183C.

18 (b) Within agricultural districts, uses compatible to the  
19 activities described in section 205-2 as determined by the  
20 commission shall be permitted; provided that accessory  
21 agricultural uses and services described in sections 205-2 and  
22 205-4.5 may be further defined by each county by zoning



1 ordinance. Each county shall adopt ordinances setting forth  
2 procedures and requirements, including provisions for  
3 enforcement, penalties, and administrative oversight, for the  
4 review and permitting of agricultural tourism uses and  
5 activities as an accessory use on a working farm, or farming  
6 operation as defined in section 165-2; provided that  
7 agricultural tourism activities shall not be permissible in the  
8 absence of a bona fide farming operation. Ordinances shall  
9 include but not be limited to:

- 10 (1) Requirements for access to a farm, including road  
11 width, road surface, and parking;
- 12 (2) Requirements and restrictions for accessory facilities  
13 connected with the farming operation, including gift  
14 shops and restaurants; provided that overnight  
15 accommodations shall not be permitted;
- 16 (3) Activities that may be offered by the farming  
17 operation for visitors;
- 18 (4) Days and hours of operation; and
- 19 (5) Automatic termination of the accessory use upon the  
20 cessation of the farming operation.

21 Each county may require an environmental assessment under  
22 chapter 343 as a condition to any agricultural tourism use and



1 activity. Other uses may be allowed by special permits issued  
2 pursuant to this chapter. The minimum lot size in agricultural  
3 districts shall be determined by each county by zoning  
4 ordinance, subdivision ordinance, or other lawful means;  
5 provided that the minimum lot size for any agricultural use  
6 shall not be less than one acre, except as provided herein. If  
7 the county finds that unreasonable economic hardship to the  
8 owner or lessee of land cannot otherwise be prevented or where  
9 land utilization is improved, the county may allow lot sizes of  
10 less than the minimum lot size as specified by law for lots  
11 created by a consolidation of existing lots within an  
12 agricultural district and the resubdivision thereof; provided  
13 that the consolidation and resubdivision do not result in an  
14 increase in the number of lots over the number existing prior to  
15 consolidation; and provided further that in no event shall a lot  
16 which is equal to or exceeds the minimum lot size of one acre be  
17 less than that minimum after the consolidation and resubdivision  
18 action. The county may also allow lot sizes of less than the  
19 minimum lot size as specified by law for lots created or used  
20 for plantation community subdivisions as defined in section 205-  
21 4.5(a)(12), for public, private, and quasi-public utility



1 purposes, and for lots resulting from the subdivision of  
2 abandoned roadways and railroad easements.

3 (c) Unless authorized by special permit issued pursuant to  
4 this chapter, only the following uses shall be permitted within  
5 rural districts:

6 (1) Low density residential uses;

7 (2) Agricultural uses;

8 (3) Golf courses, golf driving ranges, and golf-related  
9 facilities; and

10 (4) Public, quasi-public, and public utility facilities.

11 In addition, the minimum lot size for any low density  
12 residential use shall be one-half acre and there shall be but  
13 one dwelling house per one-half acre, except as provided for in  
14 section 205-2.

15 (d) Within aerospace high technology districts, uses  
16 compatible to the activities described in section 205-2(f) as  
17 determined by the land use commission and uses permitted in  
18 agricultural districts, other than farm dwellings or living  
19 quarters, shall be permitted. Other uses may be allowed by  
20 special permits issued pursuant to section 205-6; except that  
21 residential use shall be prohibited and nonconforming uses shall  
22 be subject to section 205-8."



SECTION 5. Section 205-5.1, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Geothermal resource subzones may be designated within the urban, rural, agricultural, ~~[and]~~ conservation, and aerospace high technology land use districts established under section 205-2. Only those areas designated as geothermal resource subzones may be utilized for geothermal development activities in addition to those uses permitted in each land use district under this chapter. Geothermal development activities may be permitted within urban, rural, agricultural, ~~[and]~~ conservation, and aerospace high technology land use districts in accordance with this chapter~~[-]~~; provided that up to per cent of the geothermal energy generated within an aerospace high technology district shall be provided to aerospace facilities within the district at no cost. "Geothermal development activities" means the exploration, development, or production of electrical energy from geothermal resources and direct use applications of geothermal resources; provided that within the urban, rural, ~~[and]~~ agricultural, and aerospace high technology land use districts, direct use applications of geothermal resources are permitted both within and outside of areas



1 designated as geothermal resource subzones pursuant to section  
2 205-5.2 if such direct use applications are in conformance with  
3 all other applicable state and county land use regulations and  
4 are in conformance with this chapter."

5 2. By amending subsection (c) to read:

6 "(c) The use of an area for geothermal development  
7 activities within a geothermal resource subzone shall be  
8 governed by the board within the conservation district and,  
9 except as herein provided, by state and county statutes,  
10 ordinances, and rules not inconsistent herewith within  
11 agricultural, rural, ~~[and]~~ urban, and aerospace high technology  
12 districts, except that no land use commission approval or  
13 special ~~[use]~~ permit procedures under section 205-6 shall be  
14 required for the use of such subzones. In the absence of  
15 provisions in the county general plan and zoning ordinances  
16 specifically relating to the use and location of geothermal  
17 development activities in an agricultural, rural, ~~[or]~~ urban, or  
18 aerospace high technology district, the appropriate county  
19 authority may issue a geothermal resource permit to allow  
20 geothermal development activities. "Appropriate county  
21 authority" means the county planning commission unless some  
22 other agency or body is designated by ordinance of the county



1 council. Such uses as are permitted by county general plan and  
2 zoning ordinances, by the appropriate county authority, shall be  
3 deemed to be reasonable and to promote the effectiveness and  
4 objectives of this chapter. Chapters [~~177, 178,~~] 182, 183,  
5 183C, 205A, 226, [~~342,~~] and 343 shall apply as appropriate. If  
6 provisions in the county general plan and zoning ordinances  
7 specifically relate to the use and location of geothermal  
8 development activities in an agricultural, rural, [~~or~~] urban, or  
9 aerospace high technology district, the provisions shall require  
10 the appropriate county authority to conduct a public hearing on  
11 any application for a geothermal resource permit to determine  
12 whether the use is in conformity with the criteria specified in  
13 subsection (e) for granting geothermal resource permits;  
14 provided that within the urban, rural, and agricultural land use  
15 districts, direct use applications of geothermal resources are  
16 permitted without any application for a geothermal resource  
17 permit both within and outside of areas designated as geothermal  
18 resource subzones pursuant to section 205-5.2 if such direct use  
19 applications are in conformance with all other applicable state  
20 and county land use regulations and are in conformance with this  
21 chapter."

22 3. By amending subsection (e) to read:





1       "(e) If geothermal development activities are proposed  
2 within agricultural, rural, ~~[or]~~ urban, or aerospace high  
3 technology districts and such proposed activities are not  
4 permitted uses pursuant to county general plan and zoning  
5 ordinances, then after receipt of a properly filed and completed  
6 application, including all required supporting data, the  
7 appropriate county authority shall conduct a public hearing.  
8 Upon appropriate request for mediation from any party who  
9 submitted comment at the public hearing, the county authority  
10 shall appoint a mediator within five days. The county authority  
11 shall require the parties to participate in mediation. The  
12 mediator shall not be an employee of any county agency or its  
13 staff. The mediation period shall not extend beyond thirty days  
14 after mediation started, except by order of the county  
15 authority. Mediation shall be confined to the issues raised at  
16 the public hearing by the party requesting mediation. The  
17 mediator will submit a written recommendation to the county  
18 authority, based upon any mediation agreement reached between  
19 the parties for consideration by the county authority in its  
20 final decision. If there is no mediation agreement, the county  
21 authority may have a second public hearing to receive additional  
22 comment related to the mediation issues. Within ten days after



1 the second public hearing, the county authority may receive  
2 additional written comment on the issues raised at the second  
3 public hearing from any party.

4 The county authority shall consider the comments raised at  
5 the second hearing before rendering its final decision. The  
6 county authority shall then determine whether a geothermal  
7 resource permit shall be granted to authorize the geothermal  
8 development activities described in the application. The  
9 appropriate county authority shall grant a geothermal resource  
10 permit if it finds that applicant has demonstrated that:

11 (1) The desired uses would not have unreasonable adverse  
12 health, environmental, or socio-economic effects on  
13 residents or surrounding property;

14 (2) The desired uses would not unreasonably burden public  
15 agencies to provide roads and streets, sewers, water,  
16 drainage, school improvements, and police and fire  
17 protection; and

18 (3) That there are reasonable measures available to  
19 mitigate the unreasonable adverse effects or burdens  
20 referred to above.

21 Unless there is a mutual agreement to extend, a decision  
22 shall be made on the application by the appropriate county



1 authority within six months of the date a complete application  
2 was filed; provided that the time limit may be extended by  
3 agreement between the applicant and the appropriate county  
4 authority."

5 SECTION 6. Section 205-6, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7 "(a) Subject to this section, the county planning  
8 commission may permit certain unusual and reasonable uses within  
9 agricultural [~~and~~], rural, and aerospace high technology  
10 districts other than those for which the district is classified.

11 Any person who desires to use the person's land within an  
12 agricultural [~~or~~], rural, or aerospace high technology district  
13 other than for an agricultural [~~or~~], rural, or aerospace high  
14 technology use, as the case may be, may petition the planning  
15 commission of the county within which the person's land is

16 located for permission to use the person's land in the manner  
17 desired. No special permit shall be issued under this section  
18 to permit residential use or a farm dwelling or living quarters  
19 in an aerospace high technology district. Each county may

20 establish the appropriate fee for processing the special permit  
21 petition. Copies of the special permit petition shall be



1 forwarded to the land use commission, the office of planning,  
2 and the department of agriculture for their review and comment."

3 SECTION 7. Section 205-8, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **"§205-8 Nonconforming uses.** (a) The lawful use of land  
6 or buildings existing on the date of establishment of any  
7 interim agricultural district and rural district in final form  
8 may be continued although the use, including lot size, does not  
9 conform to this chapter; provided that no nonconforming building  
10 shall be replaced, reconstructed, ~~[or]~~ enlarged, or changed to  
11 another nonconforming use and no nonconforming use of land shall  
12 be expanded or changed to another nonconforming use. In  
13 addition, if any nonconforming use of land or building is  
14 discontinued or held in abeyance for a period of one year, the  
15 further continuation of such use shall be prohibited.

16 (b) The lawful use of land or buildings existing on the  
17 date of the initial establishment of an aerospace high  
18 technology district may be continued as it exists, although the  
19 use does not conform to this chapter; provided that no  
20 nonconforming use of land or building shall be expanded or  
21 changed to another nonconforming use without a special permit.  
22 If any nonconforming residential use in an aerospace high

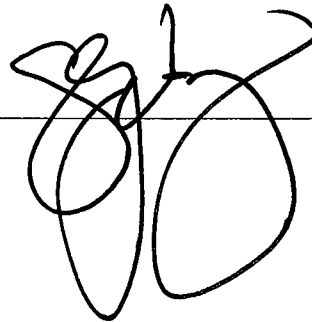


1 technology district is discontinued or held in abeyance for a  
2 period of one year, the further continuation of the residential  
3 use shall be prohibited."

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

6 SECTION 9. This Act shall take effect upon its approval.  
7

INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, consisting of a stylized 'S' followed by a large loop and a final flourish, written over a horizontal line.

# S.B. NO. 3065

**Report Title:**

Aerospace High Technology Districts; Land Use

**Description:**

Creates aerospace high technology districts in Hawaii. Allows geothermal resource subzones to be designated within aerospace high technology districts; provided that any geothermal energy producers provide a specified percentage of their energy output to any aerospace high technology facility within the district at no cost. Allows nonconforming use of land or buildings in aerospace high technology districts to continue as they exist; provided that no nonconforming use shall be expanded or changed to another nonconforming use without a special permit.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

