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# A BILL FOR AN ACT

RELATING TO PUBLIC PROPERTY.

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

1           SECTION 1. Section 102-1, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§102-1 Definition.** The word "concession" as used in this  
4 chapter means the grant to a person of the privilege to:

- 5           (1) Conduct operations involving the sale of goods, wares,  
6 merchandise, or services to the general public  
7 including but not limited to food and beverage  
8 establishments, retail stores, motor vehicle rental  
9 operations under chapter 437D, and advertising, [~~and~~  
10 ~~communications and telecommunication services,~~] in or  
11 on buildings or land under the jurisdiction of any  
12 government agency;
- 13           (2) Operate a parking lot on property owned or controlled  
14 by the State with the exception of buildings,  
15 facilities, and grounds operated by or otherwise under  
16 the jurisdiction of the department of education; and



1           (3) Use, for compensation, space on public property to  
2           display advertising[, ~~or to conduct operations for~~  
3           ~~communications or telecommunications purposes~~]."

4           SECTION 2. Section 103D-102, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6           "(b) Notwithstanding subsection (a), this chapter shall  
7 not apply to contracts by governmental bodies:

8           (1) Solicited or entered into before July 1, 1994, unless  
9           the parties agree to its application to a contract  
10          solicited or entered into prior to July 1, 1994;

11          (2) To disburse funds, irrespective of their source:

12           (A) For grants or subsidies as those terms are  
13           defined in section 42F-101, made by the State in  
14           accordance with standards provided by law as  
15           required by article VII, section 4, of the State  
16           Constitution; or by the counties pursuant to  
17           their respective charters or ordinances;

18           (B) To make payments to or on behalf of public  
19           officers and employees for salaries, fringe  
20           benefits, professional fees, or reimbursements;

21           (C) To satisfy obligations that the State is required  
22           to pay by law, including paying fees, permanent



1 settlements, subsidies, or other claims, making  
2 refunds, and returning funds held by the State as  
3 trustee, custodian, or bailee;

4 (D) For entitlement programs, including public  
5 assistance, unemployment, and workers'  
6 compensation programs, established by state or  
7 federal law;

8 (E) For dues and fees of organizations of which the  
9 State or its officers and employees are members,  
10 including the National Association of Governors,  
11 the National Association of State and County  
12 Governments, and the Multi-State Tax Commission;

13 (F) For deposit, investment, or safekeeping,  
14 including expenses related to their deposit,  
15 investment, or safekeeping;

16 (G) To governmental bodies of the State;

17 (H) As loans, under loan programs administered by a  
18 governmental body; and

19 (I) For contracts awarded in accordance with chapter  
20 103F;

21 (3) To procure goods, services, or construction from a  
22 governmental body other than the University of Hawaii



1           bookstores, from the federal government, or from  
2           another state or its political subdivision;

3           (4) To procure the following goods or services which are  
4           available from multiple sources but for which  
5           procurement by competitive means is either not  
6           practicable or not advantageous to the State:

7           (A) Services of expert witnesses for potential and  
8           actual litigation of legal matters involving the  
9           State, its agencies, and its officers and  
10          employees, including administrative quasi-  
11          judicial proceedings;

12          (B) Works of art for museum or public display;

13          (C) Research and reference materials including books,  
14          maps, periodicals, and pamphlets, which are  
15          published in print, video, audio, magnetic, or  
16          electronic form;

17          (D) Meats and foodstuffs for the Kalaupapa  
18          settlement;

19          (E) Opponents for athletic contests;

20          (F) Utility services whose rates or prices are fixed  
21          by regulatory processes or agencies;



- 1 (G) Performances, including entertainment, speeches,  
2 and cultural and artistic presentations;
- 3 (H) Goods and services for commercial resale by the  
4 State;
- 5 (I) Services of printers, rating agencies, support  
6 facilities, fiscal and paying agents, and  
7 registrars for the issuance and sale of the  
8 State's or counties' bonds;
- 9 (J) Services of attorneys employed or retained to  
10 advise, represent, or provide any other legal  
11 service to the State or any of its agencies, on  
12 matters arising under laws of another state or  
13 foreign country, or in an action brought in  
14 another state, federal, or foreign jurisdiction,  
15 when substantially all legal services are  
16 expected to be performed outside this State;
- 17 (K) Financing agreements under chapter 37D; [and]
- 18 (L) Operations involving the sale of communications  
19 and telecommunications services, in or on  
20 buildings or land under the jurisdiction of any  
21 government agency; and



- 1           ~~(L)~~ (M) Any other goods or services which the policy  
2                           board determines by rules or the chief  
3                           procurement officer determines in writing is  
4                           available from multiple sources but for which  
5                           procurement by competitive means is either not  
6                           practicable or not advantageous to the State;
- 7           (5) Which are specific procurements expressly exempt from  
8                           any or all of the requirements of this chapter by:
- 9                           (A) References in state or federal law to provisions  
10                           of this chapter or a section of this chapter, or  
11                           references to a particular requirement of this  
12                           chapter; and
- 13                           (B) Trade agreements, including the Uruguay Round  
14                           General Agreement on Tariffs and Trade (GATT)  
15                           which require certain non-construction and non-  
16                           software development procurements by the  
17                           comptroller to be conducted in accordance with  
18                           its terms; and
- 19           (6) With a bidder or offeror who is a United States  
20           General Services Administration-approved sole source vendor, who  
21           shall be exempt from complying with section 103D-302, 103D-303,  
22           or 103D-304, as applicable, in any procurement funded by state



1 and federal matching funds, if the bidder or offeror was  
2 responsible for obtaining and was the recipient of the federal  
3 funds."

4 SECTION 3. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 19 2010



**Report Title:**

Public Property; Concessions; Hawaii Public Procurement Code

**Description:**

Amends definition of the term "concession" to remove telecommunications operations. Exempts telecommunications operations from the Hawaii public procurement code.

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