



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 10, 2017

GOV. MSG. NO. 1239

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 10, 2017, the following bill was signed into law:

HB997 HD2 SD2 CD1

RELATING TO CONCESSIONS
ACT 138 (17)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO CONCESSIONS.

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

1 SECTION 1. The legislature finds that the award of airport
2 concession contracts or other arrangements has not always been
3 for the best value of services or in the best interest of the
4 State. Unlike laws applicable to most of the other airports in
5 the United States that require airport concessions to be awarded
6 by best value, Hawaii law requires airport concessions to be
7 awarded based on the amount of money paid without any meaningful
8 discussions or negotiations. For example, under Hawaii law, a
9 fifteen-year, airport concession restaurant contract can be
10 awarded to the person or entity that simply agrees to pay the
11 most money to the State, without any discussions or negotiations
12 regarding the quality or variety of food and service to be
13 provided. The legislature recognizes that the highest amount of
14 money offered for a contract does not necessarily result in the
15 State receiving the best value of services or serve the best
16 interests of the State.

17 The legislature further finds that tourism is the State's
18 top industry and that public airports are generally a visitor's



1 first and last impressions of Hawaii. Thus, services and
2 offerings at the State's airports truly impact the State's
3 economy. To ensure quality services and offerings to travelers,
4 the department of transportation should not be limited to
5 awarding airport concessions based on who offers the most or the
6 least amount of money. While dollars paid should be one of the
7 factors considered by the department, monetary amounts should
8 not be the sole or most compelling factor and basis for awarding
9 an airport concession or arrangement at Hawaii's airports.

10 Act 46, Session Laws of Hawaii 2012, as amended by Act 126,
11 Session Laws of Hawaii 2014, temporarily permitted the
12 department of transportation to negotiate amendments to existing
13 concession contracts in exchange for revenue-enhancing
14 improvements paid for by the concession. This approach proved
15 to be successful as it resulted in better airport experiences
16 and offerings and increased revenues to the public airport
17 system. As a result of negotiations, about \$90,000,000 worth of
18 improvements were fast-tracked and paid for by airport tenants,
19 which in turn, will generate millions of dollars of additional
20 revenues for Hawaii's airport system.



1 Recognizing that existing laws impeded the award of airport
2 concession contracts that could provide free wireless
3 connectivity and advertising opportunities at state airports,
4 the legislature enacted Act 141, Session Laws of Hawaii 2014, to
5 permit the department of transportation to temporarily pursue
6 airport concession contract negotiations for electronic
7 communication services and advertising opportunities at the
8 State's airports. As a result of Act 141, the department of
9 transportation awarded wireless connectivity and advertising
10 contracts that will provide opportunities and services at
11 Hawaii's major airports and additional revenues to Hawaii's
12 airport system.

13 The legislature further finds that when an executive
14 department engages in contract negotiations rather than awarding
15 to the highest bidder, the attorney general can provide legal
16 oversight to ensure that the award granting process complies
17 with Hawaii law as well as other applicable laws.

18 The legislature believes that existing laws with the
19 emphasis on dollars paid without any negotiations allowed has
20 not served the public's best interest in meeting the needs of
21 travelers, providing additional revenues to the airport system,



1 or providing the department of transportation with the
2 flexibility and discretion necessary to meet the department's
3 important goals and objectives.

4 Therefore, the purpose of this Act is to provide the
5 department of transportation permanent authority, flexibility,
6 and discretion to pursue and enter into concession contracts and
7 other arrangements by negotiation.

8 SECTION 2. Section 102-2, Hawaii Revised Statutes, is
9 amended by amending subsections (a) and (b) to read as follows:

10 "(a) Except as otherwise specifically provided by law, no
11 concession or concession space shall be leased, let, licensed,
12 rented out, or otherwise disposed of either by contract, lease,
13 license, permit or any other arrangement, except under contract
14 let after public notice for sealed bids in the manner provided
15 by law; provided that the duration of the grant of the
16 concession or concession space shall be related to the
17 investment required but in no event to exceed fifteen years[+]
18 for the initial term, and if amended, any then remaining term
19 plus any agreed extension thereof awarded or granted by the
20 government agency making a lease or contract or other
21 arrangement relating to a concession; provided further that and



1 subject to approval by county council resolution, the fifteen-
2 year limit shall not apply to nonprofit corporations organized
3 pursuant to chapter 414D.

4 (b) The bidding requirements of subsection (a) shall not
5 apply to concessions or space on public property set aside for
6 the following purposes:

7 (1) For operation of ground transportation services and
8 parking lot operations at airports, except for motor
9 vehicle rental operations under chapter 437D;

10 (2) For lei vendors;

11 (3) For airline and aircraft operations;

12 (4) For automated teller machines and vending machines,
13 except vending machines located at public schools
14 operated by blind or visually handicapped persons in
15 accordance with section 302A-412;

16 (5) For operation of concessions set aside without any
17 charge;

18 (6) For operation of concessions by handicapped or blind
19 persons; except concessions operated in the public
20 schools by blind or visually handicapped persons in
21 accordance with section 302A-412;



- 1 (7) For operation of concessions on permits revocable on
2 notice of thirty days or less; provided that no such
3 permits shall be issued for more than a one year
4 period;
- 5 (8) For operation of concessions or concession spaces for
6 a beach service association dedicated to the
7 preservation of the Hawaii beach boy tradition,
8 incorporated as a nonprofit corporation in accordance
9 with state law, and whose members are appropriately
10 licensed or certified as required by law;
- 11 (9) For operation of concessions at county zoos, botanic
12 gardens, or other county parks which are
13 environmentally, culturally, historically, or
14 operationally unique and are supported, by nonprofit
15 corporations incorporated in accordance with state law
16 solely for purposes of supporting county aims and
17 goals of the zoo, botanic garden, or other county
18 park, and operating under agreement with the
19 appropriate agency solely for such purposes, aims, and
20 goals;



- 1 (10) For operation of concessions that furnish goods or
2 services for which there is only one source, as
3 determined by the head of the awarding government
4 agency in writing that shall be included in the
5 contract file;
- 6 (11) For any of the operations of the Hawaii health systems
7 corporation and its regional system boards;
- 8 [~~(12)~~ ~~For airport operation of concessions providing~~
9 ~~electronic communication services;~~
- 10 ~~(13)~~ ~~For airport operation of concessions consisting solely~~
11 ~~of advertising;~~
- 12 ~~(14)]~~ (12) For airport operation of concessions;
- 13 (13) For the stadium authority operation of concessions
14 providing electronic communication services;
- 15 [~~(15)]~~ (14) For the stadium authority operation of
16 concessions consisting solely of advertising; and
- 17 [~~(16)]~~ (15) For the operations of the natural energy
18 laboratory of Hawaii authority."

19 SECTION 3. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 4. This Act shall take effect on July 1, 2017;
2 provided that the amendments made to section 102-2(b), Hawaii
3 Revised Statutes, under section 2 of this Act shall not be
4 repealed when section 102-2(b), Hawaii Revised Statutes, is
5 repealed and reenacted on June 30, 2021, pursuant to section 4,
6 Act 141, Session Laws of Hawaii 2014; provided further that this
7 Act shall apply to existing concessions and arrangements covered
8 by this Act.

APPROVED this 10 day of JUL , 2017



GOVERNOR OF THE STATE OF HAWAII

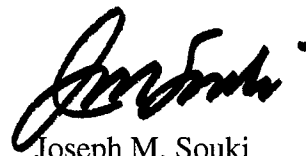


HB No. 997, HD 2, SD 2, CD 1

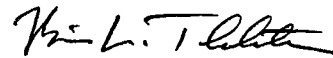
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.



Joseph M. Souki
Speaker
House of Representatives

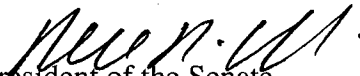



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.


President of the Senate


Clerk of the Senate