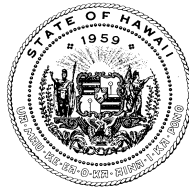


HB 997, HD2

RELATING TO CONCESSIONS.

Removes the limitations on the types of airport concessions that are exempt from the public bidding requirements. (HB997 HD2)



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

March 20, 2017
1:20 p.m.
State Capitol, Room 225

H.B. 997, H.D. 2
RELATING TO CONCESSIONS

Senate Committee on Transportation and Energy

The Department of Transportation (DOT) – Airports Division **supports** the intent of H.B. 997, H.D. 2 which states monetary amounts should not be the sole or most compelling factor and basis for awarding concessions at Hawaii's airports.

However, the DOT prefers the language in H.B. 997, H.D. 1, which allows the DOT the flexibility and discretion to grant an extension of time to concession agreements, based on circumstances that would benefit and be in the best interest of the DOT.

Awarding a concessionaire agreement through a negotiation process, as compared to the highest bid, should result in improved quality food, products and services. Furthermore, most mainland airports award terminal concession agreements through a negotiation process. Quality products and services offered will increase volume and sales, which in turn will increase airport concession fees.

As the DOT continues its efforts to improve our facilities and offerings to the traveling public, the passage of this bill will add support to the DOT's goals and objectives.

Thank you for the opportunity to provide testimony.



AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Lorraine Inouye, Chair
Committee on Transportation and Energy
Hawaii State Senate
State of Hawaii

Hearing on March 20, 2017 at 1:20pm, Room 225

Re: H.B. 997, HD2 – Relating To Concessions

Dear Chair Inouye and Honorable Committee Members,

My name is Peter Fithian and I am the Legislative Chair for the Airports Concessionaires Committee whose membership consists of the major concession operators at Hawaii's public airports. Airport concessions presently and historically have contributed more than half of the operating revenues for Hawaii's airport system which as you know is special funded.

Our Committee supports this bill. However, we respectfully ask that you consider adopting HD1 version of the bill to give the DOT added flexibility. Attached is a copy of HD1 for your review.

We firmly believe its time that Hawaii's Airport System --- like most airport systems across the United States --- award an airport concession contract by negotiation and not by the present top-dollar-bid process which does not permit any discussions or negotiations with representatives for the State.

As explained in Section 1 of the bill, simply getting paid the most money, or least money/cheapest, does not mean the State is getting the best value from a concession that the State can be proud of, best value to the State. Money paid to the State while important, should not be the controlling or most important factor with no other discussions and negotiations allowed.

As an example, it makes no sense to award the operation of an airport restaurant to the person who simply paid top-dollar and met minimum qualifications. Prior to awarding an airport-concession contract representatives of the State should be allowed to talk to help ensure the State can also be proud of: 1) quality and types of food; 2) management experience; 3) hours of operation; and 4) other services that ensure the State is getting "best value" and can be proud of the restaurant operation.

Our public airports are typically the "first and last impression" our visitors have of Hawaii. It's thus critical and important to our tourist industry and economy that such concession operations offer and provide products and services that Hawaii can be proud of. This bill will allow discussions and negotiations by State representatives that will help ensure such operations will make Hawaii proud,

provide best value, and not result in poor operations due to decisions controlled by who paid the most money to the State.

As noted in Section 1 of the bill, Hawaii's legislature has tested the ability to the State to negotiate airport concession contracts with great results and benefits to the State. Most recently such flexibility to negotiate resulted in Hawaii for the first time in its history granting airport-concession rights that will not only generate additional revenues to the Hawaii's airport division but will also provide at Hawaii's major airports: 1) access to free wireless services at all of Hawaii's major airports; and 2) advertising/display services. Again, after many many years since Statehood Hawaii's DOT Airports was finally able to achieve such added services and benefits as well as added revenues to Hawaii's airport system as a result of the Legislature granting these 2 concessions to be "negotiated" which expedited and achieved best value for the State. You testing of the negotiation process has worked, it's now time for Hawaii's airports to join with the majority of airports who award their contracts via negotiations.

In addition to negotiations being supervised and agreements drafted by the Department of Attorney General, it is also important to note that any such negotiated agreements relating to such rights to use or access public property cannot be signed until first approved by the Department of Land and Natural Resources (DLNR) following public notice and at and following a public hearing. The DOT Airports Division will have to present and justify its requests to approve such agreement at such public hearing. Present law has built in safe guards. Any one objecting to the negotiation process and/or results of such negotiations or having any concerns will have the right to complain and and asked that the contract not be approved for signing at a public hearing before the DLNR Land Board as required by Section 171-11 of the HRS.

Thus, even with negotiated contracts the current process has ample safeguards to ensure that everything is done legally and publicly disclosed and approved before any such negotiated agreement is signed.

In response to inquiries we also wish to note that this "concession section of the law" (Section 102) is not part of the procurement code (Section 103). Given the ample "public hearing" safeguards as mentioned the drafters of the procurement code let this Section 102 remain outside of and not part of the procurement code.

In closing, like most airports across the United States, I urge you to pass this bill that will allow for discussions and negotiations of airport-concession agreements by State representatives before any final selection and/or decision is made by the State.

Thank you for allowing us to testify. I'll be happy to try and answer any questions you may have.

A BILL FOR AN ACT

RELATING TO CONCESSIONS.

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

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

The legislature further finds that tourism is the State's top industry and that public airports are generally a visitor's first and last impressions of Hawaii. Thus, services and offerings at the State's airports truly impact the State's economy. To ensure quality services and offerings to travelers, the department of transportation should not be limited to awarding airport concessions based on who offers the most or the least amount of money. While dollars paid should be one of the factors considered by the department, monetary amounts should not be the sole or

most compelling factor and basis for awarding an airport concession or arrangement at Hawaii's airports.

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

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

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

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

transportation with the flexibility and discretion necessary to meet the department's important goals and objectives.

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

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

"(a) Except as otherwise specifically provided by law, no concession or concession space shall be leased, let, licensed, rented out, or otherwise disposed of either by contract, lease, license, permit or any other arrangement, including any amendment thereof not already provided for in any type of arrangement, except under contract let after public notice for sealed bids in the manner provided by law; provided that the duration of the grant of the concession or concession space shall be related to the investment required but in no event to exceed fifteen years[+] for the initial term, and if amended, any then remaining term plus any agreed extension thereof; provided further that and subject to approval by county council resolution, the fifteen-year limit shall not apply to nonprofit corporations organized pursuant to chapter 414D.

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

- (1) For operation of ground transportation services and parking lot operations at airports, except for motor vehicle rental operations under chapter 437D;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For automated teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 302A-412;
- (5) For operation of concessions set aside without any charge;

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

(7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued for more than a one year period;

(8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beach boy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law;

(9) For operation of concessions at county zoos, botanic gardens, or other county parks which are environmentally, culturally, historically, or operationally unique and are supported, by nonprofit corporations incorporated in accordance with state law solely for purposes of supporting county aims and goals of the zoo, botanic garden, or other county park, and operating under agreement with the appropriate agency solely for such purposes, aims, and goals;

(10) For operation of concessions that furnish goods or services for which there is only one source, as determined by the head of the awarding government agency in writing that shall be included in the contract file;

(11) For any of the operations of the Hawaii health systems corporation and its regional system boards;

(12) For airport operation of concessions [~~providing electronic communication services;~~

~~(13) For airport operation of concessions consisting solely of advertising];~~

~~(14)~~ (13) For the stadium authority operation of concessions providing electronic communication services;

~~(15)~~ (14) For the stadium authority operation of concessions consisting solely of advertising; and

~~(16)~~ (15) For the operations of the natural energy laboratory of Hawaii authority."

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

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

Report Title:

Transportation Concessions; Contracts; Lease Terms; Bidding

Description:

Makes subsequent amendments to concession documents subject to sealed bidding requirements. Clarifies that the grant of concession or concession

space shall not exceed fifteen years of a remaining term plus any agreed extension of the term. Removes the limitations on the types of airport concessions that are exempt from the public bidding requirements. (HB997 HD1)

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