
A BILL FOR AN ACT

RELATING TO CONCESSIONS ON PUBLIC PROPERTY.

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

1 SECTION 1. The legislature finds that section 102-2,
2 Hawaii Revised Statutes, provides that concessions on public
3 property are to be granted by sealed top-dollar bid, with
4 limited exceptions.

5 Section 102-2, Hawaii Revised Statutes, also allows some
6 concessions to be exempt from bidding requirements because a
7 person or entity offering the most money may not be the best
8 suited or qualified to meet the government's goals to preserve
9 public-owned assets, such as parks, or may not be best suited or
10 qualified to serve the needs of the public, including the
11 enhancement of customer and visitor experiences. Thus, the
12 legislature finds that the controlling factors in the award of
13 concessions should not be limited to pricing or whether a
14 concession is operated by a for profit or nonprofit entity.

15 The legislature also finds that requiring concessionaires
16 to incur construction costs pose challenges. While public
17 leases may be granted for up to sixty-five years, concession



1 contracts may not exceed fifteen years, making it difficult for
2 agencies to find concessionaires who are willing to invest in
3 the necessary capital improvements to provide satisfactory
4 concession services to visitors and residents of the State. It
5 is difficult for potential concessionaires to generate
6 sufficient revenues to support operations while amortizing the
7 concessions' construction and other costs at the current lease
8 and contract lengths of fifteen years. Accordingly, the
9 legislature believes that it is in the public's best interests
10 to provide flexibility and to authorize the increase of the
11 maximum length of a concession contract. Furthermore, a
12 determination as to whether a county park is environmentally,
13 culturally, historically, or operationally unique for the
14 purpose of determining whether a concession should be exempt
15 from sealed bidding requirements should be made by the director
16 of parks and recreation of the respective county.

17 The purpose of this Act is to facilitate the provision of
18 concession services to the public by:

- 19 (1) Increasing the maximum length of concession contracts;



- 1 (2) Exempting certain operations of ground transportation
2 services and parking lot operations at small boat
3 harbors from the sealed bid requirements;
- 4 (3) Exempting concessions for beach or ocean-related
5 recreational services from the sealed bid
6 requirements, with certain conditions;
- 7 (4) Providing that a county director of parks and
8 recreation has sole discretion to designate which
9 county parks are environmentally, culturally,
10 historically, or operationally unique for purposes of
11 determining whether a concession at the park is exempt
12 from the sealed bid requirements; and
- 13 (5) Expanding the exemption from the sealed bid
14 requirements for concessions at county zoos, botanic
15 gardens, or county parks that are designated by the
16 respective county director of parks and recreation, in
17 the director's sole discretion, as environmentally,
18 culturally, historically, or operationally unique;
19 provided that the concessions are awarded to
20 responsible offerors whose proposals are the most



1 advantageous, rather than solely to certain nonprofit
2 corporations.

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

5 "(a) Except as otherwise specifically provided by law, no
6 concession or concession space shall be leased, let, licensed,
7 rented out, or otherwise disposed of either by contract, lease,
8 license, permit, or any other arrangement, except under contract
9 let after public notice for sealed bids in the manner provided
10 by law; provided that the duration of the grant of the
11 concession or concession space shall be related to the
12 investment required but in no event to exceed [~~fifteen~~] twenty-
13 five years for the initial term, and if amended, any then
14 remaining term plus any agreed extension thereof awarded or
15 granted by the government agency making a lease or contract or
16 other arrangement relating to a concession; provided further
17 that and subject to approval by county council resolution, the
18 [~~fifteen-year~~] twenty-five-year limit shall not apply to
19 nonprofit corporations organized pursuant to chapter 414D.



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

4 (1) For operation of ground transportation services and
5 parking lot operations at airports[7] and small boat
6 harbors, except for motor vehicle rental operations
7 under chapter 437D;

8 (2) For lei vendors;

9 (3) For airline and aircraft operations;

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

14 (5) For operation of concessions set aside without any
15 charge;

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

20 (7) For operation of concessions on permits revocable on
21 notice of thirty days or less; provided that no such



1 permits shall be issued for more than a one year
2 period;

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

9 (9) For operation of concessions or concession spaces
10 providing for beach or ocean-related recreational
11 services; provided that the concessions are awarded to
12 the responsible offeror whose proposal is determined
13 to be most advantageous, taking into consideration
14 prices and evaluation factors set forth in the request
15 for proposals;

16 ~~[(9)]~~ (10) For operation of concessions at county zoos,
17 botanic gardens, or ~~[other]~~ county parks ~~[which]~~ that
18 are designated by the respective county director of
19 parks and recreation, in the director's sole
20 discretion, as environmentally, culturally,
21 historically, or operationally unique and are



1 supported~~[7]~~ by nonprofit corporations incorporated in
2 accordance with state law solely for purposes of
3 supporting county aims and goals of the zoo, botanic
4 garden, or ~~[other]~~ designated county park, and
5 operating under agreement with the appropriate agency
6 solely for ~~[such]~~ those purposes, aims, and goals;

7 (11) For operation of concessions at county zoos, botanic
8 gardens, or county parks that are designated by the
9 respective county director of parks and recreation, in
10 the director's sole discretion, as environmentally,
11 culturally, historically, or operationally unique;
12 provided that the concessions are awarded to the
13 responsible offeror whose proposal is determined to be
14 the most advantageous, taking into consideration
15 prices and evaluation factors set forth in the request
16 for proposals;

17 ~~[(10)]~~ (12) For operation of concessions that furnish goods
18 or services for which there is only one source, as
19 determined by the head of the awarding government
20 agency in writing; provided that the written
21 determination shall be included in the contract file;



1 ~~[(11)]~~ (13) For any of the operations of the Hawaii health
2 systems corporation and its regional system boards;
3 ~~[(12)]~~ (14) For airport operation of concessions; ~~[+]and[+~~
4 ~~[(13)]~~ (15) For the operations of the natural energy
5 laboratory of Hawaii authority."

6 SECTION 3. Section 171-56, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§171-56 Contract or license for concessions or concession**
9 **space.** The board of land and natural resources may, subject to
10 chapter 102, dispose of concessions, as defined in chapter 102,
11 and shall enter into contracts or issue licenses for such
12 concessions; provided that the duration of the contract or
13 license shall be related to the investment required, but in no
14 event to exceed ~~[fifteen]~~ twenty-five years."

15 SECTION 4. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 5. If any provision of this Act, or the
19 application thereof to any person or circumstance, is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act that can be given effect without the

1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 6. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 7. This Act shall take effect upon its approval.



Report Title:

City and County of Honolulu Mayor's Package; Concessions; Public Property; Bids; Proposals

Description:

Increases the maximum term of a concession contract. Exempts certain operations of ground transportation services and parking lot operations at small boat harbors. Exempts concessions for beach or ocean-related recreational services from sealed bid requirements, with certain conditions. Provides that a county director of parks and recreation has sole discretion to designate which county parks are environmentally, culturally, historically, or operationally unique for purposes of determining whether a concession at the park is exempt from the sealed bid requirements. Expands the exemption from the sealed bid requirements for concessions at county zoos, botanic gardens, or county parks that are designated by the respective county director of parks and recreation, in the director's sole discretion, as environmentally, culturally, historically, or operationally unique; provided that the concessions are awarded to responsible offerors whose proposals are the most advantageous, rather than solely to certain nonprofit corporations. (CD1)

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