
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. Further, determination
12 as to whether a county park is environmentally, culturally,
13 historically, or operationally unique for the purpose of
14 determining whether a concession should be exempt from sealed
15 bidding requirements should be made by the director of parks and
16 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 concessions for beach or ocean-related
2 recreational services from the sealed bid
3 requirements, with certain conditions;
- 4 (3) Providing that a county director of parks and
5 recreation has sole discretion to designate which
6 county parks are environmentally, culturally,
7 historically, or operationally unique for purposes of
8 determining whether a concession at the park is exempt
9 from the sealed bid requirements; and
- 10 (4) Expanding the exemption for concessions at county
11 zoos, botanic gardens, or county parks that are
12 designated by the respective county director of parks
13 and recreation, in the director's sole discretion, as
14 environmentally, culturally, historically, or
15 operationally unique; provided that the concessions
16 are awarded to responsible offerors whose proposals
17 are the most advantageous, rather than solely to
18 certain nonprofit corporations.

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



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

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

- 19 (1) For operation of ground transportation services and
20 parking lot operations at airports, except for motor
21 vehicle rental operations under chapter 437D;



- 1 (2) For lei vendors;
- 2 (3) For airline and aircraft operations;
- 3 (4) For automated teller machines and vending machines,
4 except vending machines located at public schools
5 operated by blind or visually handicapped persons in
6 accordance with section 302A-412;
- 7 (5) For operation of concessions set aside without any
8 charge;
- 9 (6) For operation of concessions by handicapped or blind
10 persons; except concessions operated in the public
11 schools by blind or visually handicapped persons in
12 accordance with section 302A-412;
- 13 (7) For operation of concessions on permits revocable on
14 notice of thirty days or less; provided that no such
15 permits shall be issued for more than a one year
16 period;
- 17 (8) For operation of concessions or concession spaces for
18 a beach service association dedicated to the
19 preservation of the Hawaii beach boy tradition,
20 incorporated as a nonprofit corporation in accordance



1 with state law, and whose members are appropriately
2 licensed or certified as required by law;

3 (9) For operation of concessions or concession spaces
4 providing for beach or ocean-related recreational
5 services; provided that the concessions are awarded to
6 the responsible offeror whose proposal is determined
7 to be most advantageous, taking into consideration
8 prices and evaluation factors set forth in the request
9 for proposals;

10 ~~[(+9)]~~ (10) For operation of concessions at county zoos,
11 botanic gardens, or ~~[other]~~ county parks ~~[which]~~ that
12 are designated by the respective county director of
13 parks and recreation, in the director's sole
14 discretion, as environmentally, culturally,
15 historically, or operationally unique and are
16 supported, by nonprofit corporations incorporated in
17 accordance with state law solely for purposes of
18 supporting county aims and goals of the zoo, botanic
19 garden, or ~~[other]~~ designated county park, and
20 operating under agreement with the appropriate agency
21 solely for ~~[such]~~ those purposes, aims, and goals;



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

11 ~~[(10)]~~ (12) For operation of concessions that furnish goods
12 or services for which there is only one source, as
13 determined by the head of the awarding government
14 agency in writing that shall be included in the
15 contract file;

16 ~~[(11)]~~ (13) For any of the operations of the Hawaii health
17 systems corporation and its regional system boards;

18 ~~[(12)]~~ (14) For airport operation of concessions; ~~[+]and[+]~~

19 ~~[(13)]~~ (15) For the operations of the natural energy
20 laboratory of Hawaii authority."



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

3 "§171-56 Contract or license for concessions or concession
4 space. The board of land and natural resources may, subject to
5 chapter 102, dispose of concessions, as defined in chapter 102,
6 and shall enter into contracts or issue licenses for such
7 concessions; provided that the duration of the contract or
8 license shall be related to the investment required, but in no
9 event to exceed [~~fifteen~~] _____ years."

10 SECTION 4. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun before its effective date.

13 SECTION 5. If any provision of this Act, or the
14 application thereof to any person or circumstance, is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act that can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

19 SECTION 6. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 7. This Act shall take effect on July 1, 2022.



Report Title:

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

Description:

Increases the maximum term of a concession. 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 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. Effective 7/1/2022.
(SD1)

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