

JAN 25 2017

---

# 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 have 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 State.



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

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



1 which in turn, will generate millions of dollars of additional  
2 revenues for Hawaii's airport system.

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

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

20 The legislature believes that existing laws with the  
21 emphasis on dollars paid without any negotiations allowed has



1 not served the public's best interest in meeting the needs of  
2 travelers, providing additional revenues to the airport system,  
3 or providing the department of transportation with the  
4 flexibility and discretion necessary to meet the department's  
5 important goals and objectives.

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

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

12 "(a) Except as otherwise specifically provided by law, no  
13 concession or concession space shall be leased, let, licensed,  
14 rented out, or otherwise disposed of either by contract, lease,  
15 license, permit or any other arrangement, including any  
16 amendment thereof not already provided for in an arrangement,  
17 except under contract let after public notice for sealed bids in  
18 the manner provided by law; provided that the duration of the  
19 grant of the concession or concession space shall be related to  
20 the investment required but in no event to exceed fifteen  
21 years[+] of the then remaining term plus any agreed extension



1 thereof; provided further that and subject to approval by county  
2 council resolution, the fifteen-year limit shall not apply to  
3 nonprofit corporations organized 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)]~~ (13) For the stadium authority operation of  
13           concessions providing electronic communication  
14           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.



# S.B. NO. 1254

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 1 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.

INTRODUCED BY:

*Theresa E. Brown*

*Mark*

*Will Eyo*

*BT*

*J. L. J.*

*Clarence Kishikawa*

*P. E.*

*Paul E. Brown*

*Brown*

*John*





# S.B. NO. 1254

**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.

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

