

JAN 17 2020

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, appropriately provides that concessions
3 on public property are to be granted by sealed top-dollar bid,
4 with some 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 serve the needs of the public, including
9 the enhancement of customer and visitor experiences.

10 Accordingly, the legislature finds that the factors of cost and
11 whether a concession is a for-profit or nonprofit entity should
12 not be controlling when awarding certain concession contracts.

13 The legislature also finds that construction costs pose
14 challenges. While public leases may be granted for up to sixty-
15 five years, concession contracts may not exceed fifteen years.
16 This restriction makes it difficult for agencies to find
17 concessionaires who are willing to provide satisfactory



1 concession services to visitors and residents of the State. At
2 various locations where concessions are needed or warranted, it
3 is difficult for potential concessionaires to generate
4 sufficient revenues to support and amortize the concessions'
5 construction and other costs at the current lease and contract
6 lengths of fifteen years. Accordingly, the legislature finds
7 that it is in the public's best interest to provide flexibility
8 and to authorize the increase of the maximum length of
9 concession contract by five years, extending it from fifteen to
10 twenty years. Further, determination as to whether a county
11 zoo, botanic garden, or other county park is environmentally,
12 culturally, historically, or operationally unique for the
13 purpose of determining whether a concession should be exempt
14 from sealed bidding requirements should be made by the director
15 of parks and recreation of each respective county.

16 The legislature also finds that there is a need to provide
17 more historical and cultural information both to address the
18 needs of and to enhance visitor experiences within the historic
19 Hawaii Capital District, especially as the number of tourists
20 and residents visiting this district increases annually.



1 The purpose of this Act is to facilitate the provision of
2 concession services to the public by:

3 (1) Increasing the maximum length of concession contracts
4 from fifteen years to twenty years;

5 (2) Replacing requirements that certain concessions shall
6 be operated by nonprofit corporations in order to be
7 exempt from the sealed bid requirements of section
8 102-2(a), Hawaii Revised Statutes, with a requirement
9 that state and county agencies give preference to
10 nonprofit corporations pursuant to rules adopted by
11 the respective agency;

12 (3) Providing that a county director of parks and
13 recreation shall designate any county zoo, botanic
14 garden, or other county park that is environmentally,
15 culturally, historically, or operationally unique for
16 purposes of determining whether a concession at the
17 zoo, botanic garden, or other park is exempt from the
18 sealed bid requirements of section 102-2(a), Hawaii
19 Revised Statutes; and

20 (4) Exempting concessions that provide historical and
21 cultural information, goods, and services to visitors



1 and residents within the historic Hawaii Capital
2 District from the sealed bid requirements of section
3 102-2(a), Hawaii Revised Statutes.

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

6 "(a) Except as otherwise specifically provided by law, no
7 concession or concession space shall be leased, let, licensed,
8 rented out, or otherwise disposed of either by contract, lease,
9 license, permit or any other arrangement, except under contract
10 let after public notice for sealed bids in the manner provided
11 by law; provided that the duration of the grant of the
12 concession or concession space shall be related to the
13 investment required but in no event to exceed [~~fifteen~~] twenty
14 years for the initial term, and if amended, any then remaining
15 term plus any agreed extension thereof awarded or granted by the
16 government agency making a lease or contract or other
17 arrangement relating to a concession; provided further that and
18 subject to approval by county council resolution, the [~~fifteen-~~
19 ~~year~~] twenty-year limit shall not apply to nonprofit
20 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]~~ Operation of ground transportation
5 services and parking lot operations at airports,
6 except for motor vehicle rental operations under
7 chapter 437D;

8 (2) ~~[For lei]~~ Lei vendors;

9 (3) ~~[For airline]~~ Airline and aircraft operations;

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

14 (5) ~~[For operation]~~ Operation of concessions set aside
15 without any charge;

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



- 1 (7) ~~[For operation]~~ Operation of concessions on permits
2 revocable on notice of thirty days or less; provided
3 that ~~[no such]~~ these permits shall not be issued for
4 more than a one year period;
- 5 (8) ~~[For operation]~~ Operation of concessions or concession
6 spaces for a beach service association dedicated to
7 the preservation of the Hawaii beach boy tradition,
8 ~~[incorporated as a nonprofit]~~ by a corporation or
9 other entity formed in accordance with state law, and
10 whose members are appropriately licensed or certified
11 as required by law;
- 12 (9) ~~[For operation]~~ Operation of concessions at county
13 zoos, botanic gardens, or other county parks ~~[which]~~
14 that are designated by the respective county director
15 of parks and recreation, in the director's sole
16 discretion, as environmentally, culturally,
17 historically, or operationally unique ~~[and are]~~;
18 provided that county zoos, botanic gardens, or other
19 county parks designated under this paragraph shall be
20 supported~~[,]~~ by nonprofit corporations incorporated in
21 accordance with state law solely for purposes of



1 supporting county aims and goals of the designated
2 zoo, botanic garden, or other county park, and
3 ~~[operating]~~ shall operate under agreement with the
4 appropriate agency solely for ~~[such]~~ those purposes,
5 aims, and goals;

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

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

13 (12) ~~[For airport]~~ Airport operation of concessions;

14 (13) ~~[For the]~~ The stadium authority operation of
15 concessions providing electronic communication
16 services;

17 (14) ~~[For the]~~ The stadium authority operation of
18 concessions consisting solely of advertising; ~~[and]~~

19 (15) ~~[For the]~~ The operations of the natural energy
20 laboratory of Hawaii authority~~[+]~~; and



1 (16) The operation of concessions that provide historical
2 or cultural information, goods, or services within the
3 historic Hawaii Capital District;
4 provided that any state or county department or agency, before
5 awarding any contract or entering into any lease for a
6 concession or concession space described in paragraph (8) or
7 (9), shall adopt rules pursuant to chapter 91 that establish a
8 preference for the award of contracts to nonprofit corporations;
9 provided further that the rules shall include criteria for
10 determining whether a potential concessionaire is a nonprofit
11 corporation."

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

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



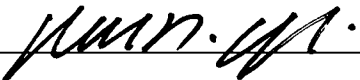
S.B. NO. 2096

1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect on July 1, 2020;
7 provided that the amendments made to section 102-2(b), Hawaii
8 Revised Statutes, by section 2 of this Act shall not be repealed
9 when that section is reenacted on June 30, 2021, pursuant to
10 section 4 of Act 141, Session Laws of Hawaii 2014.

11
INTRODUCED BY:



By Request



S.B. NO. 2096

Report Title:

Concessions; Public Property; Bids; Proposals

Description:

Increases the maximum length of public property concession contracts from 15 to 20 years. Replaces requirements that certain concessions shall be operated by nonprofit corporations in order to be exempt from sealed bid requirements with a requirement that state and county agencies give preference to nonprofit corporations pursuant to rules. Provides that a county director of parks and recreation shall designate which county zoos, botanic gardens, or other county parks are environmentally, culturally, historically, or operationally unique for the purpose of determining whether a concession at the zoo, botanic garden, or other park is exempt from sealed bid requirements. Exempts from sealed bid requirements any concession on public property whose operations provide historical and cultural information, goods, and services within the historic Hawaii Capital District.

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

