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# 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 from fifteen years to  
12 twenty-five years. Further, determination as to whether a  
13 county park is environmentally, culturally, historically, or  
14 operationally unique for the purpose of determining whether a  
15 concession should be exempt from sealed bidding requirements  
16 should be made by the director of parks and recreation of the  
17 respective county.

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

20 (1) Increasing the maximum length of concession contracts  
21 from fifteen years to twenty-five years;



1           (2) Broadening requirements to permit all types of  
2           entities to be eligible to compete for certain  
3           concessions that are exempt from the sealed bid  
4           requirements of section 102-2(a), Hawaii Revised  
5           Statutes; and

6           (3) Providing that a county director of parks and  
7           recreation shall designate which county parks are  
8           environmentally, culturally, historically, or  
9           operationally unique for the purpose of determining  
10          whether a concession at the park is exempt from the  
11          sealed bid requirements of section 102-2(a), Hawaii  
12          Revised Statutes.

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

15          "(a) Except as otherwise specifically provided by law, no  
16          concession or concession space shall be leased, let, licensed,  
17          rented out, or otherwise disposed of either by contract, lease,  
18          license, permit or any other arrangement, except under contract  
19          let after public notice for sealed bids in the manner provided  
20          by law; provided that the duration of the grant of the  
21          concession or concession space shall be related to the



1 investment required but in no event to exceed [~~fifteen~~  
2 twenty-five years for the initial term, and if amended, any  
3 remaining term plus any agreed extension thereof awarded or  
4 granted by the government agency making a lease or contract or  
5 other arrangement relating to a concession; provided further  
6 that and subject to approval by county council resolution, the  
7 [~~fifteen-year~~] twenty-five-year limit shall not apply to  
8 nonprofit corporations organized pursuant to chapter 414D.

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

- 12 (1) For operation of ground transportation services and  
13 parking lot operations at airports, except for motor  
14 vehicle rental operations under chapter 437D;
- 15 (2) For lei vendors;
- 16 (3) For airline and aircraft operations;
- 17 (4) For automated teller machines and vending machines,  
18 except vending machines located at public schools  
19 operated by blind or visually handicapped persons in  
20 accordance with section 302A-412;



- 1 (5) For operation of concessions set aside without any  
2 charge;
- 3 (6) For operation of concessions by handicapped or blind  
4 persons; except concessions operated in the public  
5 schools by blind or visually handicapped persons in  
6 accordance with section 302A-412;
- 7 (7) For operation of concessions on permits revocable on  
8 notice of thirty days or less; provided that no such  
9 permits shall be issued for more than a one year  
10 period;
- 11 (8) For operation of concessions or concession spaces for  
12 a beach service association dedicated to the  
13 preservation of the Hawaii beach boy tradition,  
14 incorporated as a nonprofit corporation in accordance  
15 with state law, and whose members are appropriately  
16 licensed or certified as required by law;
- 17 (9) For operation of concessions or concession spaces  
18 providing for beach or ocean-related recreational  
19 services; provided that the concessions are awarded to  
20 the responsible offeror whose proposal is determined  
21 to be most advantageous, taking into consideration



1 prices and evaluation factors set forth in the request  
2 for proposals;

3 [~~9~~] (10) For operation of concessions at county zoos,  
4 botanic gardens, or [~~ether~~] county parks [~~which~~] that  
5 are designated by the respective county director of  
6 parks and recreation, in the director's sole  
7 discretion, as environmentally, culturally,  
8 historically, or operationally unique and are  
9 supported, by nonprofit corporations incorporated in  
10 accordance with state law solely for purposes of  
11 supporting county aims and goals of the zoo, botanic  
12 garden, or [~~ether~~] designated county park, and  
13 operating under agreement with the appropriate agency  
14 solely for [~~such~~] those purposes, aims, and goals;

15 (11) For operation of concessions at county zoos, botanic  
16 gardens, or county parks that are designated by the  
17 respective county director of parks and recreation, in  
18 the director's sole discretion, as environmentally,  
19 culturally, historically, or operationally unique;  
20 provided that the concessions are awarded to the  
21 responsible offeror whose proposal is determined to be



1           the most advantageous, taking into consideration  
2           prices and evaluation factors set forth in the request  
3           for proposals;

4       ~~[(10)]~~ (12) For operation of concessions that furnish goods  
5           or services for which there is only one source, as  
6           determined by the head of the awarding government  
7           agency in writing that shall be included in the  
8           contract file;

9       ~~[(11)]~~ (13) For any of the operations of the Hawaii health  
10           systems corporation and its regional system boards;

11       ~~[(12)]~~ (14) For airport operation of concessions; ~~[+]and[+]~~

12       ~~[(13)]~~ (15) For the operations of the natural energy  
13           laboratory of Hawaii authority."

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

16           "**§171-56 Contract or license for concessions or concession**  
17   **space.** The board of land and natural resources may, subject to  
18   chapter 102, dispose of concessions, as defined in chapter 102,  
19   and shall enter into contracts or issue licenses for such  
20   concessions; provided that the duration of the contract or



1 license shall be related to the investment required, but in no  
2 event to exceed [~~fifteen~~] twenty-five years."

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

6 SECTION 5. If any provision of this Act, or the  
7 application thereof to any person or circumstance, is held  
8 invalid, the invalidity does not affect other provisions or  
9 applications of the Act that can be given effect without the  
10 invalid provision or application, and to this end the provisions  
11 of this Act are severable.

12 SECTION 6. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

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

**Description:**

Increases the term of a concession from fifteen to twenty-five years and removes the requirement that certain concessions can only be awarded to nonprofit organizations. Provides that the director of parks and recreation of the respective county in their sole discretion to avoid vagueness in the present law should make certain decisions and designation. Exempts concessions on public property whose operations provide historical and cultural information, goods, and services within the State from bidding requirements. Takes effect 7/1/2050.  
(SD1)

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

