

ACT 5

H.B. NO. 754

A Bill for an Act Relating to the Hawaii Tourism Authority.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 201B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§201B- Applicability of Hawaii public procurement code; convention center contractor; construction contracts. The construction contracts for the maintenance of the convention center facility by the private contractor that operates the convention center, by its direct or indirect receipt of, and its expenditure of, public funds from the department of business, economic development, and tourism or the authority, or both, shall be subject to part III of chapter 103D.”

SECTION 2. Section 102-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) For operation of ground transportation services and parking lot operations at airports, except for motor vehicle rental operations under chapter 437D;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For automatic teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 302A-412;
- (5) For operation of concessions set aside without any charge;
- (6) For operation of concessions by handicapped or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section 302A-412;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued for more than a one year period;
- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beach boy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law;
- (9) For operation of concessions at county zoos, botanic gardens, or other county parks which are environmentally, culturally, historically, or operationally unique and are supported, by nonprofit corporations incorporated in accordance with state law solely for purposes of supporting county aims and goals of the zoo, botanic garden, or other county park, and operating under agreement with the appropriate agency solely for such purposes, aims, and goals;
- (10) For operation of concessions that furnish goods or services for which there is only one source, as determined by the head of the awarding government agency in writing that shall be included in the contract file; and
- ~~[(11) For operation of concession or concession spaces at the convention center under chapter 201B; and~~

- (12)] (11) For any of the operations of the Hawaii health systems corporation and its regional system boards.”

SECTION 3. Section 201-3, Hawaii Revised Statutes, is amended to read as follows:

“§201-3 **Specific research and promotional functions of the department.** Without prejudice to its general functions and duties, the department of business, economic development, and tourism shall have specific functions in the following areas:

- (1) Industrial development. The department shall [~~determine~~]:
 - (A) Determine through technical and economic surveys the profit potential of new or expanded industrial undertakings; [~~develop~~]
 - (B) Develop through research projects and other means new and improved industrial products and processes; [~~promote~~]
 - (C) Promote studies and surveys to determine consumer preference as to design and quality and to determine the best methods of packaging, transporting, and marketing the State’s industrial products; [~~disseminate~~]
 - (D) Disseminate information to assist the present industries of the State, to attract new industries to the State, and to encourage capital investment in present and new industries in the [~~State;~~ assist] state;
 - (E) Assist associations of producers and distributors of industrial products to introduce these products to consumers; and [~~make~~]
 - (F) Make grants or contracts as may be necessary or advisable to accomplish the foregoing;
- (2) Land development. The department shall [~~encourage~~]:
 - (A) Encourage the most productive use of all land in the [~~State~~] state in accordance with a general plan developed by the department; [~~encourage~~]
 - (B) Encourage the improvement of land tenure practices on leased private lands; [~~promote~~]
 - (C) Promote an informational program directed to landowners, producers of agricultural and industrial commodities, and the general public regarding the most efficient and most productive use of the lands in the [~~State;~~ state; and [~~make~~]
 - (D) Make grants or contracts as may be necessary or advisable to accomplish the foregoing;
- (3) Credit development. The department shall [~~conduct~~]:
 - (A) Conduct a continuing study of agricultural and industrial credit needs; [~~encourage~~]
 - (B) Encourage the development of additional private and public credit sources for agricultural and industrial enterprises; [~~promote~~]
 - (C) Promote an informational program to acquaint financial institutions with agricultural and industrial credit needs and the potential for agricultural and industrial expansion, and inform producers of agricultural and industrial products as to the manner in which to qualify for loans; and [~~make~~]
 - (D) Make grants or contracts as may be necessary or advisable to accomplish the foregoing;

- (4) Promotion. The department shall [disseminate]:
- (A) Disseminate information developed for or by the department pertaining to economic development to assist present industry in the [State, attract] state;
 - (B) Attract new industry and investments to the State[.]; and [assist]
 - (C) Assist new and emerging industry with good growth potential or prospects in jobs, exports, and new products.

The industrial and economic promotional activities of the department may include the use of literature, advertising, demonstrations, displays, market testing, lectures, travel, motion picture and slide films, and other promotional and publicity devices as may be appropriate;

- ~~[(5) Tourism research and statistics. The department shall maintain a program of research and statistics for the purpose of:~~
- ~~(A) Measuring and analyzing tourism trends;~~
 - ~~(B) Providing information and research to assist in the development and implementation of state tourism policy;~~
 - ~~(C) Encouraging and arranging for the conduct of tourism research and information development through voluntary means or through contractual services with qualified agencies, firms, or persons; and~~
 - ~~(D) Providing tourism information to policy makers, the public, and the visitor industry. This includes:~~
 - ~~(i) Collecting and publishing visitor related data including visitor arrivals, visitor characteristics and expenditures;~~
 - ~~(ii) Collecting and publishing hotel related statistics including the number of units available, occupancy rates, and room rates;~~
 - ~~(iii) Collecting and publishing airline related data including seat capacity and number of flights;~~
 - ~~(iv) Collecting information and conducting analyses of the economic, social, and physical impacts of tourism on the State;~~
 - ~~(v) Conducting periodic studies of the impact of ongoing marketing programs of the Hawaii tourism authority on Hawaii's tourism industry, employment in Hawaii, state taxes, and the State's lesser known and underutilized destinations; and~~
 - ~~(vi) Cooperate with the Hawaii tourism authority and provide it with the above information in a timely manner;] and~~

- ~~[(6) (5) Self-sufficiency standard. The department shall establish and update biennially a self-sufficiency standard that shall incorporate existing methods of calculation, and shall reflect, at a minimum, costs relating to housing, food, child care, transportation, health care, clothing and household expenses, federal and state tax obligations, family size, children's ages, geography, and the number of household wage earners. The department shall report to the legislature concerning the self-sufficiency standard no later than twenty days prior to the convening of the regular session of 2009, and every odd-numbered year thereafter. The recommendations shall address, among other things, the [utilization] use of any federal funding that may be available for the purposes of establishing and updating the self-sufficiency standard.~~

The department shall be the central agency to coordinate film permit activities in the [State-] state."

SECTION 4. Section 201B-2, Hawaii Revised Statutes, is amended to read as follows:

"§201B-2 Hawaii tourism authority; establishment; board; ~~[staff-] president and chief executive officer.~~ (a) There is established the Hawaii tourism authority, which shall be a body corporate and a public instrumentality of the State, for the purpose of implementing this chapter. The authority shall be placed within the department of business, economic development, and tourism for administrative purposes only.

(b) The authority shall be headed by a policy-making board of directors ~~[which consists]~~ that shall consist of twelve ~~[public, voting]~~ members ~~[-and four ex officio nonvoting members]~~; provided that:

- (1) ~~[Twelve public, voting]~~ The members shall be appointed by the governor as provided in section 26-34, except as otherwise provided by law;
- (2) The ~~[twelve public, voting]~~ members shall ~~[be composed of]~~ include at least one representative each from the city and county of Honolulu and the counties of Hawaii, Kauai, and Maui; the remaining ~~[public]~~ members shall be appointed at-large;
- (3) ~~[Of the twelve public, voting members, three]~~ Three members shall be appointed by the governor from a list of three names submitted for each appointment by the president of the senate, and three members shall be appointed by the governor from a list of three names submitted for each appointment by the speaker of the house of representatives; provided that if fewer than three names are submitted for each appointment, the governor may disregard the list;
- (4) At least six ~~[of the twelve public, voting]~~ members shall have knowledge, experience, and expertise in the area of visitor industry management, marketing, promotion, transportation, retail, entertainment, or visitor attractions, and at least one shall have knowledge, experience, and expertise in the area of Hawaiian cultural practices; provided that no more than three members shall represent, be employed by, or be under contract to any sector of the industry represented on the board;
- (5) The governor shall make appointments to ensure the fulfillment of all requirements; provided that any appointments made after July 1, 2002, shall be made to fulfill the requirements in place when the appointments are made;
- ~~[(6) The director of business, economic development, and tourism, or a designated representative, shall be an ex officio nonvoting member;~~
- ~~(7) The director of transportation, or a designated representative, shall be an ex officio nonvoting member;~~
- ~~(8) The chairperson of the board of land and natural resources, or a designated representative, shall be an ex officio nonvoting member;~~
- ~~(9) The executive director of the state foundation on culture and the arts, or a designated representative, shall be an ex officio nonvoting member;]~~ and
- ~~[(10)]~~ (6) No person who has served as a member of the board of directors of the Hawaii Visitors and Convention Bureau shall be eligible to sit as a ~~[public, voting]~~ member of the board of directors of the Hawaii tourism authority until at least two years have expired between

the person's termination from service on the Hawaii Visitors and Convention Bureau board and the person's appointment to the authority's board of directors.

(c) ~~[The public members]~~ Members shall be appointed by the governor for terms of four years. Each ~~[public]~~ member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall be applicable insofar as it relates to the number of terms and consecutive number of years a member may serve on the board.

(d) The board shall elect a chairperson from among the ~~[voting]~~ members. ~~[The director of business, economic development, and tourism or the designated representative shall not be chairperson of the board.]~~

(e) Seven ~~[voting]~~ members shall constitute a quorum and a minimum of seven affirmative votes shall be necessary for all actions by the authority. The members shall serve without compensation, but shall be reimbursed for expenses, including traveling expenses, necessary for the performance of their duties.

(f) The board shall appoint ~~[an executive director,]~~ one person to serve as president and chief executive officer, exempt from chapters 76 and 88 who shall oversee the authority staff; provided that the compensation package, including salary, shall not exceed nine per cent of the five per cent authorized for administrative expenses under section 201B-11(c); and provided further that the compensation package shall not include private sector moneys or other contributions. The board shall set the ~~[executive director's]~~ president and chief executive officer's duties, responsibilities, holidays, vacations, leaves, hours of work, and working conditions. It may grant ~~[such]~~ other benefits as it deems necessary.

~~[The board may appoint a sports coordinator, exempt from chapters 76, 78, and 88, who shall provide management services for all sporting events supported through the authority.]~~

~~(g) The authority may employ persons not subject to chapters 76 and 78 to perform and execute the functions of the authority.]”~~

SECTION 5. Section 201B-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise limited by this chapter, the authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) ~~[Make]~~ Through its president and chief executive officer, make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter; provided that the authority may enter into contracts and agreements for a period of up to five years, subject to the availability of funds; and provided further that the authority may enter into agreements for the use of the convention center facility for a period of up to ten years;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Unless otherwise provided in this chapter, adopt rules in accordance with chapter 91 with respect to its projects, operations, properties, and facilities;
- (6) Through its ~~[executive director]~~ president and chief executive officer, represent the authority in communications with the governor and the legislature;
- (7) Through its ~~[executive director,]~~ president and chief executive officer, provide for the appointment of officers, agents, a sports coordinator, and employees, subject to the approval of the board, prescribing

- their duties and qualifications, and fixing their salaries, without regard to chapters 76 and 78, if there is no anticipated revenue shortfall in the tourism special fund and funds have been appropriated by the legislature and allotted as provided by law;
- (8) Through its ~~[executive director]~~ president and chief executive officer, purchase supplies, equipment, or furniture;
 - (9) Through its ~~[executive director]~~ president and chief executive officer, allocate the space or spaces that are to be occupied by the authority and appropriate staff;
 - (10) ~~[Engage]~~ Through its president and chief executive officer, engage the services of qualified persons to implement the State's tourism marketing plan or portions thereof as determined by the authority;
 - (11) ~~[Engage]~~ Through its president and chief executive officer, engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
 - (12) Procure insurance against any loss in connection with its property and other assets and operations in amounts and from insurers as it deems desirable;
 - (13) Contract for or accept revenues, compensation, proceeds, and gifts or grants in any form from any public agency or any other source, including any revenues or proceeds arising from the operation or use of the convention center;
 - (14) Develop, coordinate, and implement state policies and directions for tourism and related activities taking into account the economic, social, and physical impacts of tourism on the State and its natural resources infrastructure; provided that the authority shall support the efforts of other state and county departments or agencies to manage, improve, and protect Hawaii's natural environment and areas frequented by visitors;
 - (15) Have a permanent, strong focus on marketing and promotion;
 - (16) Conduct market development-related research as necessary;
 - (17) Coordinate all agencies and advise the private sector in the development of tourism-related activities and resources;
 - (18) Work to eliminate or reduce barriers to travel ~~[in order]~~ to provide a positive and competitive business environment, including coordinating with the department of transportation on issues affecting airlines and air route development;
 - (19) Market and promote sports-related activities and events;
 - (20) Coordinate the development of new products with the counties and other persons in the public sector and private sector, including the development of sports, culture, health and wellness, education, technology, agriculture, and nature tourism;
 - (21) Establish a public information and educational program to inform the public of tourism and tourism-related problems;
 - (22) Encourage the development of tourism educational, training, and career counseling programs;
 - (23) Establish a program to monitor, investigate, and respond to complaints about problems resulting directly or indirectly from the tourism industry and taking appropriate action as necessary;
 - (24) Develop and implement emergency measures to respond to any adverse effects on the tourism industry, pursuant to section 201B-9;
 - (25) Set and collect rents, fees, charges, or other payments for the lease, use, occupancy, or disposition of the convention center facility without regard to chapter 91;

- (26) Notwithstanding chapter 171, acquire, lease as lessee or lessor, own, rent, hold, and dispose of the convention center facility in the exercise of its powers and the performance of its duties under this chapter; and
- (27) Acquire by purchase, lease, or otherwise, and develop, construct, operate, own, manage, repair, reconstruct, enlarge, or otherwise effectuate, either directly or through developers, a convention center facility.”

SECTION 6. Section 201B-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In accordance with subsection (a), the authority shall ~~[be responsible for developing]~~ develop measures of effectiveness to assess the overall benefits and effectiveness of the marketing plan and include documentation of the directly attributable benefits of the plan to the following:

- (1) Hawaii’s tourism industry;
- (2) Employment in Hawaii;
- (3) State taxes; and
- (4) The State’s lesser known and ~~[underutilized]~~ underused destinations.”

SECTION 7. Section 201B-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The authority may enter into contracts and agreements that include the following:

- (1) Tourism promotion, marketing, and development;
- (2) Market development-related research;
- (3) Product development and diversification issues focused on visitors;
- (4) Promotion, development, and coordination of sports-related activities and events;
- (5) Promotion of Hawaii, through a coordinated statewide effort, as a place to do business, including high technology business, and as a business destination;
- (6) Reduction of barriers to travel;
- ~~[(7)]~~ Marketing, management, use, operation, or maintenance of the convention center facility, including the purchase or sale of goods or services, logo items, concessions, sponsorships, and license agreements, or any use of the convention center facility as a commercial enterprise; provided that effective January 1, 2003, and thereafter, the contract for management of the convention center facility shall include marketing for all uses of the facility; ~~[and]~~
- ~~[(8)]~~ Tourism research and statistics to:
 - (A) Measure and analyze tourism trends;
 - (B) Provide information and research to assist in the development and implementation of state tourism policy;
 - (C) Provide tourism information on:
 - (i) Visitor arrivals, visitor characteristics, and expenditures;
 - (ii) The number of transient accommodation units available, occupancy rates, and room rates;
 - (iii) Airline-related data including seat capacity and number of flights;
 - (iv) The economic, social, and physical impacts of tourism on the State; and

(v) The impact of ongoing marketing programs of the authority on Hawaii's tourism industry, employment in Hawaii, state taxes, and the State's lesser known and underused destinations; and

(9) Any and all other activities necessary to carry out the intent of this chapter;

provided that for any contract or agreement valued at \$25,000 and over, the authority shall provide notice to the speaker of the house of representatives and the president of the senate on the same day that such notification is given to the governor."

SECTION 8. Section 201B-9, Hawaii Revised Statutes, is amended to read as follows:

"[§201B-9] Tourism emergency. (a) If the board determines that the occurrence of a world conflict, terrorist threat, national or global economic crisis, natural disaster, outbreak of disease, or other catastrophic event[~~, regardless of when or where it occurs,~~] adversely affects Hawaii's tourism industry by resulting in a substantial interruption in the commerce of the State and adversely affecting the welfare of its people, the board shall submit a request to the governor to declare that a tourism emergency exists.

(b) Upon declaration by the governor that a tourism emergency exists pursuant to subsection (a), the authority shall develop and implement measures to respond to the tourism emergency, including providing assistance to tourists during the emergency; provided that any tourism emergency response measure implemented pursuant to this subsection shall not include any provision that would adversely affect the organized labor force in tourism-related industries. With respect to a national or global economic crisis only, in addition to the governor's declaration of the existence of a tourism emergency, no action in response to the tourism emergency declaration may be taken by the authority without the governor's express approval."

SECTION 9. Section 201B-11, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Moneys in the tourism special fund shall be used by the authority for the purposes of this chapter; provided that:

- (1) Not more than five per cent of this amount shall be used for administrative expenses, including \$15,000 for a protocol fund to be expended at the discretion of the [~~executive director;~~] president and chief executive officer; and
- (2) At least \$1,000,000 shall be made available to support efforts to manage, improve, and protect Hawaii's natural environment and areas frequented by visitors."

SECTION 10. Section 201B-13, Hawaii Revised Statutes, is amended to read as follows:

"[§201B-13] Assistance by state and county agencies[-]; advisory group. (a) Any state or county agency may render services upon request of the authority.

(b) The authority may establish an advisory group that may meet monthly or as the authority deems necessary, which may include the director of business, economic development, and tourism, director of transportation, chairperson of the board of land and natural resources, and executive director of the state

foundation on culture and the arts to advise the authority on matters relating to their respective departments or agency in the preparation and execution of suggested:

- (1) Measures to respond to tourism emergencies pursuant to section 201B-9;
- (2) Programs for the management, improvement, and protection of Hawaii's natural environment and other areas frequented by visitors;
- (3) Measures to address issues affecting airlines, air routes, and barriers to travel to Hawaii; and
- (4) Programs to perpetuate the cultures of Hawaii and engage local communities to sustain and preserve the native Hawaiian culture."

SECTION 11. For fiscal year 2010-2011, after the revenues collected under chapter 237D, Hawaii Revised Statutes, are distributed pursuant to section 237D-2(b), Hawaii Revised Statutes, 12.5 per cent of the revenues derived under section 237D-2(b)(2), Hawaii Revised Statutes, shall be deposited into the tourism special fund established under section 201B-11, Hawaii Revised Statutes, and any excess revenues shall be deposited into the general fund.

SECTION 12. Act 58, Session Laws of Hawaii 2004, as amended by section 50 of Act 22, Session Laws of Hawaii 2005, as amended by section 1 of Act 306, Session Laws of Hawaii 2006, is amended by amending section 14 to read as follows:

that: "SECTION 14. This Act shall take effect upon its approval; provided

- (1) The amendments made to sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, by part I of this Act shall not be repealed when those sections are reenacted on June 30, 2006, by section 1 of Act 137, Session Laws of Hawaii 2005;
- (2) Sections 3, 4, 5, 6, and 7 of Part I shall be repealed on June 30, 2010, and [sections 28-8.3,];
 - (A) Sections 201B-2[.], and 201B-11, Hawaii Revised Statutes, shall be reenacted in the form in which they read on May 5, 2004[, and sections]; except that the amendments made by Act , Session Laws of Hawaii 2009, to section 201B-2, Hawaii Revised Statutes, and subsection (c) of section 201B-11, Hawaii Revised Statutes, shall not be repealed; and
 - (B) Sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 1986; and
- (3) Section 9 shall take effect on July 1, 2004."

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 14. This Act shall take effect on July 1, 2009; provided that section 11 shall take effect upon the enactment of S.B. No. 1111, S.D. 1, H.D. 1, C.D. 1,² Regular Session of 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)

Notes

1. Edited pursuant to HRS §23G-16.5.

2. Act 61.