

A Bill for an Act Relating to Concessions.

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

SECTION 1. The legislature finds that the award of airport concession contracts or other arrangements has not always been for the best value of services or in the best interest of the State. Unlike laws applicable to most of the other airports in the United States that require airport concessions to be awarded by best value, Hawaii law requires airport concessions to be awarded based on the amount of money paid without any meaningful discussions or negotiations. For example, under Hawaii law, a fifteen-year, airport concession restaurant contract can be awarded to the person or entity that simply agrees to pay the most money to the State, without any discussions or negotiations regarding the quality or variety of food and service to be provided. The legislature recognizes that the highest amount of money offered for a contract does not necessarily result in the State receiving the best value of services or serve the best interests of the State.

The legislature further finds that tourism is the State's top industry and that public airports are generally a visitor's first and last impressions of Hawaii. Thus, services and offerings at the State's airports truly impact the State's economy. To ensure quality services and offerings to travelers, the department of

transportation should not be limited to awarding airport concessions based on who offers the most or the least amount of money. While dollars paid should be one of the factors considered by the department, monetary amounts should not be the sole or most compelling factor and basis for awarding an airport concession or arrangement at Hawaii's airports.

Act 46, Session Laws of Hawaii 2012, as amended by Act 126, Session Laws of Hawaii 2014, temporarily permitted the department of transportation to negotiate amendments to existing concession contracts in exchange for revenue-enhancing improvements paid for by the concession. This approach proved to be successful as it resulted in better airport experiences and offerings and increased revenues to the public airport system. As a result of negotiations, about \$90,000,000 worth of improvements were fast-tracked and paid for by airport tenants, which in turn, will generate millions of dollars of additional revenues for Hawaii's airport system.

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

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

The legislature believes that existing laws with the emphasis on dollars paid without any negotiations allowed has not served the public's best interest in meeting the needs of travelers, providing additional revenues to the airport system, or providing the department of transportation with the flexibility and discretion necessary to meet the department's important goals and objectives.

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

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

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

(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 automated 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;
- (11) For any of the operations of the Hawaii health systems corporation and its regional system boards;
- ~~[(12) For airport operation of concessions providing electronic communication services;~~
- ~~(13) For airport operation of concessions consisting solely of advertising;~~
- ~~(14) For airport operation of concessions;~~
- (12) For the stadium authority operation of concessions providing electronic communication services;
- ~~[(15)]~~ (14) For the stadium authority operation of concessions consisting solely of advertising; and
- ~~[(16)]~~ (15) For the operations of the natural energy laboratory of Hawaii authority.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2017; provided that the amendments made to section 102-2(b), Hawaii Revised Statutes, under section 2 of this Act shall not be repealed when section 102-2(b), Hawaii Revised Statutes, is repealed and reenacted on June 30, 2021, pursuant to section 4, Act 141, Session Laws of Hawaii 2014; provided further that this Act shall apply to existing concessions and arrangements covered by this Act.

(Approved July 10, 2017.)