

ACT 163

H.B. NO. 1432

A Bill for an Act Relating to Concessions on Public Property.

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

SECTION 1. The legislature finds that section 102-2, Hawaii Revised Statutes, provides that concessions on public property are to be granted by sealed top-dollar bid, with limited exceptions.

Section 102-2, Hawaii Revised Statutes, also allows some concessions to be exempt from bidding requirements because a person or entity offering the most money may not be the best suited or qualified to meet the government's goals to preserve public-owned assets, such as parks, or may not be best suited or qualified to serve the needs of the public, including the enhancement of customer and visitor experiences. Thus, the legislature finds that the controlling factors in the award of concessions should not be limited to pricing or whether a concession is operated by a for profit or nonprofit entity.

The legislature also finds that requiring concessionaires to incur construction costs pose challenges. While public leases may be granted for up to sixty-five years, concession contracts may not exceed fifteen years, making it difficult for agencies to find concessionaires who are willing to invest in the necessary capital improvements to provide satisfactory concession services to visitors and residents of the State. It is difficult for potential concessionaires to generate sufficient revenues to support operations while amortizing the concessions' construction and other costs at the current lease and contract lengths of fifteen years. Accordingly, the legislature believes that it is in the public's best interests to provide flexibility and to authorize the increase of the maximum length of a concession contract. Furthermore, a determination as to whether a county park is environmentally, culturally, historically, or operationally unique for the purpose of determining whether a concession should be exempt from sealed bidding requirements should be made by the director of parks and recreation of the respective county.

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

- (1) Increasing the maximum length of concession contracts;

- (2) Exempting certain operations of ground transportation services and parking lot operations at small boat harbors from the sealed bid requirements;
- (3) Exempting concessions for beach or ocean-related recreational services from the sealed bid requirements, with certain conditions;
- (4) Providing that a county director of parks and recreation has sole discretion to designate which county parks are environmentally, culturally, historically, or operationally unique for purposes of determining whether a concession at the park is exempt from the sealed bid requirements; and
- (5) Expanding the exemption from the sealed bid requirements for concessions at county zoos, botanic gardens, or county parks that are designated by the respective county director of parks and recreation, in the director's sole discretion, as environmentally, culturally, historically, or operationally unique; provided that the concessions are awarded to responsible offerors whose proposals are the most advantageous, rather than solely to certain nonprofit corporations.

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]~~ twenty-five 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]~~ twenty-five-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[,] and small boat harbors, 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 or concession spaces providing for beach or ocean-related recreational services; provided that the concessions are awarded to the responsible offeror whose proposal is determined to be most advantageous, taking into consideration prices and evaluation factors set forth in the request for proposals;
- [(9)] (10) For operation of concessions at county zoos, botanic gardens, or [other] county parks [which] that are designated by the respective county director of parks and recreation, in the director's sole discretion, as 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] designated county park, and operating under agreement with the appropriate agency solely for [such] those purposes, aims, and goals;
- (11) For operation of concessions at county zoos, botanic gardens, or county parks that are designated by the respective county director of parks and recreation, in the director's sole discretion, as environmentally, culturally, historically, or operationally unique; provided that the concessions are awarded to the responsible offeror whose proposal is determined to be the most advantageous, taking into consideration prices and evaluation factors set forth in the request for proposals;
- [(10)] (12) 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; provided that the written determination shall be included in the contract file;
- [(11)] (13) For any of the operations of the Hawaii health systems corporation and its regional system boards;
- [(12)] (14) For airport operation of concessions; [and]
- [(13)] (15) For the operations of the natural energy laboratory of Hawaii authority."

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

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

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

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

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

SECTION 7. This Act shall take effect upon its approval.

(Approved June 27, 2022.)