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, appropriately provides that concessions on public property are to be granted by sealed top-dollar bid, with some 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 serve the needs of the public, including the enhancement of customer and visitor experiences. Thus, the legislature finds that cost and whether a concession is a for profit or nonprofit entity should not be the controlling factors in awarding some concessions.

The legislature also finds that 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 provide satisfactory concession services to visitors.
and residents of the State. At various locations where concessions are needed or warranted, it is difficult for potential concessionaires to generate sufficient revenues to support and amortize 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 by five years, from fifteen years to twenty years. Further, determination as to whether a county zoo, botanic garden, or other 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 legislature also finds there is a need to provide more historical and cultural information to address the needs of, and to enhance, visitor experiences within the Hawaii capital historic district and the increasing number of tourists and residents visiting this district each year.
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 from fifteen years to twenty years;
2. Replacing requirements that certain concessions shall be operated by nonprofit corporations in order to be exempt from the sealed bid requirements of section 102-2(a), Hawaii Revised Statutes, with a requirement that state and county agencies give preference to nonprofit corporations pursuant to rules adopted by the respective agency;
3. Providing 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 the sealed bid requirements of section 102-2(a), Hawaii Revised Statutes; and
4. Exempting concessions that provide historical and cultural information, goods, and services to visitors
and residents within the Hawaii capital historic
district from the sealed bid requirements of section
102-2(a), Hawaii Revised Statutes.

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
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-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] by a corporation or other entity formed 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] 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] or other entities formed 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] those 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;

(13) For the stadium authority operation of concessions providing electronic communication services;

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

(15) For the operations of the natural energy laboratory of Hawaii authority; [and]

(16) For the operation of concessions that provide historical or cultural information, goods, or services within the Hawaii capital historic district;

provided that any state or county department or agency, before awarding any contract or entering into any lease for a concession or concession space described in paragraph (8) or (9), shall first adopt rules pursuant to chapter 91 that
establish a preference for the award of contracts to nonprofit corporations; provided further that the rules shall include criteria for determining whether a potential concessionaire is a nonprofit corporation."

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

SECTION 6. This Act shall take effect on July 1, 2019; 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,
Report Title:
Concessions; Public Property; Bids; Proposals

Description:
Increases the maximum length of concession contracts from 15 years to 20 years. Replaces requirements that certain concessions shall be operated by nonprofit corporations in order to be exempt from the sealed bid requirements of section 102-2(a), Hawaii Revised Statutes, 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 the sealed bid requirements of section 102-2(a), Hawaii Revised Statutes. Exempts from sealed bid requirements of section 102-2(a), Hawaii Revised Statutes, concessions on public property whose operations provide historical and cultural information, goods, and services within the Hawaii Capital Historic District. (SD1)

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