

CHAPTER 261
AERONAUTICS

General Provisions

Section

- 261-1 Definitions
- 261-2 Development of aeronautics, general
- 261-3 Legislation, intervention
- 261-4 Airports, general
- 261-4.5 Biosecurity, inspection, and cargo support facilities
- 261-5 Disposition of airport revenue fund
- 261-5.5 Passenger facility charge special fund
- 261-5.6 Rental motor vehicle customer facility charge special fund
- 261-6 Civil air patrol
- 261-7 Operation and use privileges
- 261-7.5 Airport facilities; collection of landing fees and other charges and fees
- 261-7.6 Use of credit cards to pay for airport charges
- 261-8 Federal aid
- 261-9 Contracts, law governing
- 261-10 Exclusive rights prohibited
- 261-11 Public purpose of activities
- 261-12 Rules, standards
- 261-13 Orders, notice, and opportunity for hearings, judicial review
- 261-13.5 Promotion of safety and efficient use of facilities where congestion occurs
- 261-13.6 Helicopter master plan; advisory committee
- 261-14 Federal-state joint hearings, reciprocal services, accident reporting
- 261-15 Federal airman and aircraft certificates
- 261-15.5 Aircraft registration
- 261-15.6 Annual registration fee
- 261-15.7 Failure to register
- 261-16 Licensing of airports
- 261-17 Enforcement of laws
- 261-17.5 Arrest or citation
- 261-17.6 Parking control at airports
- 261-17.7 Lost and found money or property at airports
- 261-18 Hazard pay for employees
- 261-19 Exchange of violations information
- 261-20 Department proceedings and reports
- 261-21 Penalties

Airports

- 261-22 Hilo International Airport

- 261-23 Honolulu International Airport
- 261-24 John Rodgers Terminal
- 261-25 Repealed
- 261-26 Ellison Onizuka Kona International Airport
at Keahole
- 261-27 Kawaihapai Airfield

Airport Relocation

- 261-31 Definitions
- 261-32 Assistance for displaced person, families,
businesses and nonprofit organization
- 261-33 Replacement housing
- 261-34 Not treated as income
- 261-35 Decision of director
- 261-36 Rules and regulations

Special Facility Projects

- 261-51 Definitions
- 261-52 Powers
- 261-53 Findings and determination for special facility
leases
- 261-54 Special facility lease
- 261-55 Special facility revenue bonds

Abandoned Aircraft

- 261-71 Custody and disposal of abandoned aircraft
- 261-72 Disposition of proceeds of sale
- 261-73 Custody and disposal of derelict aircraft
- 261-74 Aircraft or property taken into legal custody;
unauthorized control
- 261-75 Disposal of aircraft by persons in aircraft repair
business

Trespass to Aircraft

- 261-91 Trespass to aircraft; penalty
- 261-92 Questioning and detaining suspected persons aboard
an aircraft

Cross References

Aircraft service and maintenance facility; general excise tax exemption, see §237-24.9.

Case Notes

Provisions of chapter indicate that for purposes of antitrust actions, department of transportation is, from every aspect, an instrumentality of the State. 553 F. Supp. 976.

Does not represent clearly articulated state policy to displace competition with state regulation in the provision of airport taxi services. 562 F. Supp. 712.

"[GENERAL PROVISIONS]

Revision Note

Part heading added by revisor.

§261-1 Definitions. As used in this chapter:

"Aeronautics" means the science and art of flight, including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

"Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

"Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, airframes, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher, or air-traffic control-tower operator; but does not include any individual employed outside the United States, and its territories and possessions, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by the individual.

"Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, light, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

"Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, including approaches, together with all airport buildings and facilities located thereon.

"Airport hazard" has the meaning defined by section 262-1.

"Criminal history record check" means an examination of an individual's criminal history records by means including, but not limited to, fingerprint analysis and name inquiry into state and national criminal history record files.

"Criminal history record information" means criminal history information received from state and national criminal history record checks.

"Department" means the department of transportation.

"Director" means the director of transportation.

"Municipal" means pertaining to a municipality as herein defined.

"Municipality" means any county or other political subdivision or public corporation of the State.

"Operation of aircraft" or "operate aircraft" means the use, navigation, or piloting of aircraft in the airspace over the State or upon any airport within the State.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

"Police officer" means a police officer and any other state or county officer charged with the enforcement of state laws.

"State airway" means a route in the navigable airspace over and above the lands or waters of the State, designated by the department as a route suitable for air navigation. [L 1947, c 32, pt of §1; RL 1955, §15-1; am L Sp 1959 2d, c 1, §26; HRS §261-1; am L 1981, c 25, §2; gen ch 1985; am L 1996, c 191, §1]

" **§261-2 Development of aeronautics, general.** The department of transportation shall have general supervision over aeronautics within the State. It shall encourage, foster, and

assist in the development of aeronautics in the State and encourage the establishment of airports and air navigation facilities. It shall cooperate with and assist the federal government and other persons in the development of aeronautics and shall seek to coordinate the aeronautical activities of the State with those of the federal government. Municipalities may cooperate with the department in the development of aeronautics and aeronautics facilities in the State. [L 1947, c 32, pt of §1; RL 1955, §15-7; am L Sp 1959 2d, c 1, §26; HRS §261-2]

Cross References

Functions, generally, see §26-19.

" **§261-3 Legislation, intervention.** The department of transportation may:

- (1) Draft and recommend necessary legislation to advance the interests of the State in aeronautics;
- (2) Represent the State in aeronautical matters before federal agencies and other state agencies;
- (3) Participate as party plaintiff or defendant or as intervenor on behalf of the State or any municipality or citizen thereof in any controversy which involves the interests of the State in aeronautics. [L 1947, c 32, pt of §1; RL 1955, §15-8; am L Sp 1959 2d, c 1, §26; HRS §261-3]

" **§261-4 Airports, general.** (a) Establishment, operation, maintenance. The department of transportation may, on behalf of and in the name of the State, out of appropriations and other moneys available or made available for such purposes, plan, acquire, establish, construct, enlarge, improve, maintain, equip, install, operate, regulate, and protect, airports, air navigation facilities, buildings, and other facilities to provide for the servicing of aircraft; to provide for the comfort, accommodation, and convenience of air travelers; and to protect against airport hazards.

(b) Acquisition of property. By purchase, gift, devise, lease, or condemnation in accordance with chapter 101, the department may acquire property, real or personal, or any interest therein, including the property rights, estates, and interests mentioned in section 262-11. The department may acquire rights and interests in airports owned or controlled by others, for the purpose of meeting a civilian need which is within the scope of its functions, even though it does not have the exclusive control and operation of such airports. The

department may also acquire excess federal lands as permitted by federal law.

(c) Structures and improvements. All structures and improvements to land, to be used for airport purposes, may be planned, designed, and constructed by the department.

(d) Use of state and municipal facilities and services. In carrying out this chapter, the department may use the facilities and services of other agencies of the State and of the municipalities of the State and the agencies and municipalities shall make available their facilities and services.

(e) Fire and safety inspection. The State shall conduct fire and safety inspections at all state-owned airport facilities at least once a year, as provided in section 132-6(b). [L 1947, c 32, pt of §1; RL 1955, §15-9; am L Sp 1959 2d, c 1, §§12, 26; HRS §261-4; am L 1985, c 41, §1; am L 2008, c 18, §2]

Case Notes

In granting exclusive lease at airport, department was fulfilling duty under section; provides department with implied authority to enter into exclusive lease at airport. 745 F.2d 1281.

" **[\$261-4.5] Biosecurity, inspection, and cargo support facilities.** The department shall coordinate with the department of agriculture to facilitate the inspection, consolidation, deconsolidation, and treatment of imported and exported agriculture and other inspected commodities to meet the needs of each island and to facilitate the safe movement of enplaned and deplaned air cargo through the airports. [L 2011, c 202, §2]

Revision Note

Subsection designation deleted pursuant to §23G-15.

" **§261-5 Disposition of airport revenue fund.** (a) Except for:

- (1) All proceeds from the passenger facility charge and deposited in the passenger facility charge special fund; and
- (2) All proceeds from the rental motor vehicle customer facility charge and deposited in the rental motor vehicle customer facility charge special fund,

all moneys received by the department from rents, fees, and other charges collected pursuant to this chapter, as well as all

aviation fuel taxes paid pursuant to section 243-4(a)(2), shall be paid into the airport revenue fund created by section 248-8.

All moneys paid into the airport revenue fund shall be appropriated, applied, or expended by the department for any purpose within the jurisdiction, powers, duties, and functions of the department related to the statewide system of airports, including, without limitation, the costs of operation, maintenance, and repair of the statewide system of airports and reserves therefor, and acquisitions (including real property and interests therein), constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning for the statewide system of airports, all or any of which in the judgment of the department are necessary to the performance of its duties or functions. The department shall generate sufficient revenues from its airport properties to meet all of the expenditures of the statewide system of airports and to comply with section 39-61; provided that as long as sufficient revenues are generated to meet such expenditures, the director of transportation may, in the director's discretion, grant a rebate of the aviation fuel taxes paid into the airport revenue fund during a fiscal year pursuant to sections 243-4(a)(2) and 248-8 to any person who has paid airport use charges or landing fees during such fiscal year. Such rebate may be granted during the next succeeding fiscal year but shall not exceed one-half cent per gallon per person, and shall be computed on the total number of gallons for which the tax was paid by such person, for such fiscal year.

(b) At any time the director of transportation may transfer from the airport revenue fund all or any portion of the moneys received by the department paid under a contract entered into as authorized by section 261-7 on account of the display, sale and delivery of in-bond merchandise displayed or sold at locations in the State other than on airport properties, as permitted under federal law without causing a violation of federal grant agreements, which the director of transportation shall determine, pursuant to rules promulgated pursuant to chapter 91, to be in excess of one hundred fifty per cent of the requirements of the airport revenue fund for the ensuing twelve months.

(c) All expenditures by the department shall be on vouchers duly approved by the director of transportation or such other officer as may be designated by the director. [L 1947, c 32, pt of §1; RL 1955, §15-10; am L Sp 1959 2d, c 1, §26; am L 1962, c 24, §§2, 3; HRS §261-5; am L 1968, c 20, §2; am L 1969, c 10, §6 and c 99, §1; gen ch 1985; am L 1989, c 309, §6; am L

1990, c 149, §2; am L 2004, c 101, §4; am L 2008, c 226, §6; am L 2015, c 237, §6]

Attorney General Opinions

Indicates that fund be self-perpetuating. Att. Gen. Op. 85-22.

" **§261-5.5 Passenger facility charge special fund.** (a)

There is established in the state treasury the passenger facility charge special fund, into which shall be deposited all proceeds from the passenger facility charge.

(b) The director of transportation shall administer the passenger facility charge special fund.

(c) The passenger facility charge shall be a charge for the use and services of an undertaking for the purposes and within the meaning of section 39-61(a)(1) and (3).

Notwithstanding any laws to the contrary and without regard to chapter 91, the department may assess a passenger facility charge as authorized under title 49 United States Code section 40117 and as provided under title 14 Code of Federal Regulations part 158 for each overseas or international passenger who uses a state airport. The department shall establish the passenger facility charge in accordance with applicable federal laws and regulations. No passenger facility charge shall be assessed on flight segments between two or more airports within the State.

(d) All moneys paid into the passenger facility charge special fund shall be appropriated, applied, or expended by the department for airport capital improvement program projects approved by the legislature and as permitted under the Aviation Safety and Capacity Expansion Act of 1990, codified as 49 United States Code section 40117, as amended from time to time.

(e) Any resolution or certificate authorizing any issue of bonds relating to the use of the passenger facility charge for an airport capital improvement program project approved by the legislature may establish other accounts within the passenger facility charge special fund and require the transfer of the passenger facility charge into the other accounts to pay debt service on the related bonds. [L 2003, c 213, §14; am L 2004, c 101, §5; am L 2009, c 147, §1; am L 2011, c 41, §1]

" **§261-5.6 Rental motor vehicle customer facility charge special fund.** (a) There is established in the state treasury the rental motor vehicle customer facility charge special fund to be administered by the director, into which shall be deposited all proceeds from the rental motor vehicle customer facility charge.

(b) Moneys in the rental motor vehicle customer facility charge special fund shall be used for enhancement, renovation, operation, and maintenance of existing rental motor vehicle customer facilities and the development of new rental motor vehicle customer facilities and related services at state airports, including:

- (1) Acquisition and maintenance of property or property rights for rental motor vehicle purposes;
- (2) Acquisition of equipment for and operation of a unified shuttle bus system to and from passenger terminals and the rental motor vehicle customer facilities;
- (3) Consultant fees;
- (4) Management, operation, and maintenance fees for rental motor vehicle customer facilities; and
- (5) Conceptual plans, plans, design, construction, operation, and maintenance of, or allocable to, the approved rental motor vehicle customer facilities and related services.

In planning the future needs and expenditures of these moneys, the director, or deputy designated by the director, shall, at least once a year, consult with lessors, as defined in section 437D-3, who are using or who in the future may use the facilities and services. No moneys shall be expended to plan, design, improve, enhance, acquire, or construct rental motor vehicle customer facilities, equipment, or services shared or to be shared by rental motor vehicle concessions at a state airport except as determined by the director; provided that the director shall not approve the expenditure of any moneys except for planning and design purposes to improve or construct rental motor vehicle customer facilities and related services located at an airport until a concession bid for rental motor vehicle concessions located at the public airport as of July 1, 2008, is first advertised, bid upon, and awarded by the department of transportation.

(c) The rental motor vehicle customer facility charge special fund shall be exempt from sections 36-30 and 103-8.5.

(d) Any resolution or certificate authorizing any issue of bonds relating to the use of the rental motor vehicle customer facility charge for an airport capital improvement program project approved by the legislature may establish other accounts within the rental motor vehicle customer facility charge special fund and require the transfer of the rental motor vehicle customer facility charge into the other accounts to pay debt service on the related bonds. [L 2008, c 226, §2; am L 2010, c 204, §2]

Note

Annual reports to legislature through 2018. L 2008, c 226, §11.

" **§261-6 Civil air patrol.** (a) Beginning in fiscal year 1988-1989 and in accordance with chapter 42F, the sum of \$190,600 annually or so much thereof as may be necessary shall be granted from the general fund to carry on the operations and defray the expenses of the Hawaii wing, civil air patrol; provided that not less than \$3,000 shall be allocated to each Hawaii based civil air patrol unit that meets minimum requirements established by national headquarters and has demonstrated its capability to respond to emergencies within the State.

(b) There shall be expended from the sum granted under this section only those amounts as shall be needed for:

- (1) Repair or replacement of equipment which is not repaired or replaced by the United States government;
- (2) Defraying expenses incurred in emergency services operations or mercy or hazard mitigating missions;
- (3) Aviation and emergency services training, including supplies required to administer and implement the training;
- (4) Payment of utilities on state-owned properties;
- (5) Upkeep, replacement, or purchase of communication equipment (provided that only those sums shall be expended on communication equipment as will be necessary for the procurement or replacement of communication equipment not otherwise obtainable by grant or gift from any other source);
- (6) Purchase of aviation and vehicular fuels, oils, inspection services, maintenance, and overhaul work solely for the use of the Hawaii wing, civil air patrol;
- (7) Travel expenses related to aviation and emergency services training and coordination, not available within the State; and
- (8) The cost incurred in meeting the accounting and auditing requirements of CAP Manual 173-2 and the State.

No portion of this grant shall be expended for uniforms or personal equipment of any contractor, employee, or member of the Hawaii wing, civil air patrol nor shall any portion be paid for salaries except as provided in this section.

(c) The commander, Hawaii wing, civil air patrol, may employ salaried assistants, who shall not be subject to chapter

76, at a salary of not more than the SR-21 salary range. The assistants shall perform administrative and fiscal duties and other duties as may be required by the wing commander.

(d) All expenditures from the amount granted in subsection (a) shall be upon vouchers signed by the wing commander and the finance officer of the Hawaii wing, civil air patrol.

(e) A record of expenditures and a current financial statement shall be provided to the State on the last day of business of the months of September, December, March, and June of each fiscal year.

(f) In expending the sum granted, the Hawaii wing, civil air patrol shall assure further that it will consult, cooperate, and coordinate with the departments of transportation and defense to the end that the maximum education and development in aeronautical matters may be afforded and the maximum contribution to emergency operations and preparedness be made.

(g) The Hawaii wing, civil air patrol shall comply with chapter 42F in its application for grants; execute an annual contract with the department of transportation by the third day of July; and submit to the department of transportation an annual expenditure plan to ensure the disbursement of funds by the tenth day of July, October, January, and April of each fiscal year. [L 1951, JR 30, §§1-6; RL 1955, §15-11; am L Sp 1959 2d, c 1, §26; am L 1967, c 212, §1; HRS §261-6; am L 1970, c 160, §1; am L 1973, c 182, §1; am L 1975, c 76, §1; am L 1979, c 205, §1; am L 1985, c 186, §1; am L 1988, c 240, §1; am L 1991, c 335, §6; am L 1997, c 190, §6; am L 2000, c 253, §150; am L 2014, c 96, §16]

" **§261-7 Operation and use privileges.** (a) In operating an airport or air navigation facility owned or controlled by the department of transportation, or in which it has a right or interest, the department may enter into contracts, leases, licenses, and other arrangements with any person:

- (1) Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;
- (2) Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility;
- (3) Making available services, facilities, goods, commodities, or other things to be furnished by the department or its agents at the airport or air navigation facility; or
- (4) Granting the use and occupancy of any portion of the land under its jurisdiction that may not be required

by the department for aeronautics purposes so that it may instead put the area to economic use and thereby derive revenue therefrom.

The term "airport purpose" or "airport purposes" contained in any governor's executive order transferring jurisdiction and control of real property to the department of transportation shall be considered to include entering into contracts, leases, licenses, and other arrangements pursuant to this section.

(b) Except as otherwise provided in this section, in each case mentioned in subsection (a)(1), (2), (3), and (4), the department may establish the terms and conditions of the contract, lease, license, or other arrangement, and may fix the charges, rentals, or fees for the privileges, services, or things granted, conferred, or made available, for the purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for capital improvement projects approved by the legislature. Such charges shall be reasonable and uniform for the same class of privilege, service, or thing.

(c) The department shall enter into a contract with no more than one person ("contractor") for the sale and delivery of in-bond merchandise at Honolulu International Airport, in the manner provided by law. The contract shall confer the right to operate and maintain commercial facilities within the airport for the sale of in-bond merchandise and the right to deliver to the airport in-bond merchandise for sale to departing foreign-bound passengers.

The department shall grant the contract pursuant to the laws of this State and may take into consideration:

- (1) The payment to be made on in-bond merchandise sold at Honolulu International Airport and on in-bond merchandise displayed or sold elsewhere in the State and delivered to the airport;
- (2) The ability of the applicant to comply with all federal and state rules and regulations concerning the sale and delivery of in-bond merchandise; and
- (3) The reputation, experience, and financial capability of the applicant.

The department shall actively supervise the operation of the contractor to ensure its effectiveness. The department shall develop and implement such guidelines as it may find necessary and proper to actively supervise the operations of the contractor, and shall include guidelines relating to the department's review of the reasonableness of contractor's price schedules, quality of merchandise, merchandise assortment, operations, and service to customers.

Apart from the contract described in this subsection, the department shall confer no right upon nor suffer nor allow any person to offer to sell, sell, or deliver in-bond merchandise at Honolulu International Airport; provided that this section shall not prohibit the delivery of in-bond merchandise as cargo to the Honolulu International Airport.

(d) The department, by contract, lease, or other arrangement, upon a consideration fixed by it, may grant to any qualified person the privilege of operating, as agent of the State or otherwise, any airport owned or controlled by the department; provided that no such person shall be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the department might not have undertaken under subsection (a).

(e) The department may fix and regulate, from time to time, reasonable landing fees for aircraft, including the imposition of landing surcharges or differential landing fees, and other reasonable charges for the use and enjoyment of the airports and the services and facilities furnished by the department in connection therewith, including the establishment of a statewide system of airports landing fees, a statewide system of airports support charges, and joint use charges for the use of space shared by users, which fees and charges may vary among different classes of users such as foreign carriers, domestic carriers, inter-island carriers, air taxi operators, helicopters, and such other classes as may be determined by the director, for the purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for capital improvement projects approved by the legislature.

In setting airports rates and charges, including landing fees, the director may enter into contracts, leases, licenses, and other agreements with aeronautical users of the statewide system of airports containing such terms, conditions, and provisions as the director deems advisable.

If the director has not entered into contracts, leases, licenses, and other agreements with any or fewer than all of the aeronautical users of the statewide system of airports prior to the expiration of an existing contract, lease, license, or agreement, the director shall set and impose rates, rentals, fees, and charges pursuant to this subsection without regard to the requirements of chapter 91; provided that a public informational hearing shall be held on the rates, rentals, fees, and charges.

The director shall develop rates, rentals, fees, and charges in accordance with a residual methodology so that the

statewide system of airports shall be, and always remain, self-sustaining. The rates, rentals, fees, and charges shall be set at such levels as to produce revenues which, together with aviation fuel taxes, shall be at least sufficient to meet the expenditures of the statewide system of airports set forth in section 261-5(a), including expenditures for capital improvement projects approved by the legislature, and to comply with covenants and agreements with holders of airport revenue bonds.

The director may develop and formulate methodology in setting the various rates, rentals, fees, and charges imposed and may determine usage of space, estimate landed weights, and apply such portion of nonaeronautical revenue deemed appropriate in determining the rates, rentals, fees, and charges applicable to aeronautical users of the statewide system of airports.

The rates, rentals, fees, and charges determined by the director in the manner set forth in this subsection shall be those charges payable by the aeronautical users for the periods immediately following the date of expiration of the existing contract, lease, license, or agreement. If fees are established pursuant to this section, the department shall prepare a detailed report on the circumstances and rates and charges that have been established, and shall submit the report to the legislature no later than twenty days prior to the convening of the next regular session.

If a schedule of rates, rentals, fees, and charges developed by the director in accordance with this section is projected by the department to produce revenues which, together with aviation fuel taxes, will be in excess of the amount required to meet the expenditures of the statewide system of airports set forth in section 261-5(a), including expenditures for capital improvement projects approved by the legislature, and to comply with covenants and agreements with holders of airport revenue bonds, the department shall submit the schedule of rates, rentals, fees, and charges to the legislature prior to the convening of the next regular session of the legislature. Within forty-five days after the convening of the regular session, the legislature may disapprove any schedule of rates, rentals, fees, and charges required to be submitted to it by this section by concurrent resolution. If no action is taken by the legislature within the forty-five-day period the schedule of rates, rentals, fees, and charges shall be deemed approved. If the legislature disapproves the schedule within the forty-five-day period, the director shall develop a new schedule of rates, rentals, fees, and charges in accordance with this section within seventy-five days of the disapproval. Pending the development of a new schedule of rates, rentals, fees, and

charges, the schedule submitted to the legislature shall remain in force and effect.

Notwithstanding any other provision of law to the contrary, the department may waive landing fees and other aircraft charges established under this section at any airport owned or controlled by the State whenever:

- (1) The governor declares a state of emergency; and
- (2) The department determines that the waiver of landing fees and other charges for the aircraft is consistent with assisting in the delivery of humanitarian relief to disaster-stricken areas of the State.

(f) To enforce the payment of any charges for repairs or improvements to, or storage or care of any personal property made or furnished by the department or its agent in connection with the operation of an airport or air navigation facility owned or operated by the department, the department shall have liens on the property, which shall be enforceable by it as provided by sections 507-18 to 507-22.

(g) The department from time to time may establish developmental rates for buildings and land areas used exclusively for general aviation activities at rates not less than fifty per cent of the fair market rentals of the buildings and land areas and may restrict the extent of buildings and land areas to be used.

(h) Notwithstanding any laws to the contrary, the department may establish, levy, assess, and collect rental motor vehicle customer facility charges without regard to chapter 91, which shall be paid to the department periodically as determined by the department and shall be used to pay for, or finance on a long-term basis or other-term basis where appropriate, the design, planning, construction, and other uses of the rental motor vehicle customer facility charges as set forth by the rental motor vehicle customer facility charge special fund in section 261-5.6.

The rental motor vehicle customer facility charges shall be levied, assessed, and collected from all rental motor vehicle customers who benefit from the use of any type of rental motor vehicle facility or service provided by the department at a state airport.

Beginning September 1, 2010, the department shall levy, assess, and collect a rental motor vehicle customer facility charge of \$4.50 per day, or any portion of a day that a rental motor vehicle is rented or leased, by a rental motor vehicle concession where customers pick up and return rental vehicles to a facility at a state airport as determined by the director.

All rental motor vehicle customer facility charges shall be collected by lessors as defined in section 437D-3 and who

operate a rental motor vehicle concession awarded by the department at a state airport; provided that customers of lessors, as defined in section 437D-3, who do not operate a rental motor vehicle concession at a state airport but whose customers benefit from the use of a rental motor vehicle facility or service at a state airport paid for by rental motor vehicle customer facility charges, shall collect from rental motor vehicle customers, rental motor vehicle customer facility charges in an amount determined by the department in its sole discretion that represents a fair share of the cost and ongoing expenses relating to customer use of the facility or service notwithstanding any law to the contrary and without regard to the requirements of chapter 91. All rental motor vehicle customer facility charges collected by the lessor shall be paid to the department.

Notwithstanding any law to the contrary, the department may negotiate and contract the management, maintenance, and operations of the facility and related services with one or more airport concessions or their designee that share in the use of a rental motor vehicle customer facility at a state airport. [L 1947, c 32, pt of §1; am L 1949, c 374, §1; am L 1953, JR 14, §1; RL 1955, §15-12; am L Sp 1959 2d, c 1, §26; am L 1962, c 24, §§4, 5; HRS §261-7; am L 1968, c 20, §§3, 4; am L 1972, c 14, §1; am L 1976, c 235, §2; am L 1981, c 243, §2; am L 1982, c 90, §2; am L 1986, c 339, §24; am L 1994, c 62, §1; am L 1995, c 99, §1; am L 2008, c 226, §7; am L 2010, c 204, §3; am L 2011, c 104, §§5, 8; am L 2012, c 47, §§3, 5]

Case Notes

Provides department with implied authority to enter into exclusive lease at airport. 745 F.2d 1281.

No appeal lies under §261-13(c) from a grant of airport concession to another pursuant to subsection (a)(2). 47 H. 495, 393 P.2d 87.

" **§261-7.5 Airport facilities; collection of landing fees and other charges and fees.** (a) The department shall have a lien upon any aircraft landing upon any airport operated by it for landing fees and other charges and fees for the use of the services or facilities of the airport when payment of those charges and fees is not made immediately upon demand therefor to the operator or owner of the aircraft by a duly authorized employee of the department. The lien shall be for the full amount of the charges and fees and shall attach to any aircraft owned or operated by the person owing those charges and fees. The department shall not execute on the lien until it complies

with the procedures set out in subsections (b) through (h) of this section.

(b) The department shall cause to be placed, upon the aircraft for which charges and fees are due, a notice which shall indicate that the operator or owner of the aircraft has failed to pay such charges and fees, the time the notice was posted, and an intention to perfect a lien on the aircraft and impound it if the operator or owner of the aircraft does not pay the charges and fees incurred within forty-eight hours of the posting of the notice.

(c) Any aircraft for which the department has served notice may be summarily and administratively impounded by the department if the charges and fees which the owner or operator of the aircraft has incurred have not been paid to the department before the expiration of the forty-eight-hour notice period.

(d) Within three days after the administrative impoundment of an aircraft pursuant to this section by the department, a second notice shall be sent by certified mail, return receipt requested, to the registered owner and the operator, if known, and, if the operator is other than the owner or a representative of the owner of the impounded aircraft, the second notice shall be sent to the operator at the last address shown on the aircraft registration records of the Federal Aviation Administration. This second notice shall be comprised of a copy of the notice posted on the impounded aircraft at the start of the forty-eight-hour notice period, together with a demand that the owner or operator of the impounded aircraft pay the charges and fees which have been incurred.

(e) Within thirty days of the impoundment by the department of an aircraft, the owner or operator of the aircraft may file a written request with the department for an administrative hearing. The sole issue to be considered at this administrative hearing is whether the owner or operator is not current in payments to the department for landing fees and other fees and charges for the use of services or airport facilities owned or operated by the department. The department shall have the burden of proof at this administrative hearing.

Within three days after receipt by the department of a written request for an administrative hearing from the owner or operator of the aircraft, the department shall conduct the requested hearing. In calculating the three-day period, weekends and holidays shall be excluded.

In all other respects, chapter 91 shall govern this administrative hearing.

(f) If it is determined by the director that the owner or operator of the impounded aircraft is current in payments to the

department for charges and fees, the impounded aircraft shall be immediately released by the department to the aircraft owner or operator. In addition, the department shall bear the cost and expense of impounding the aircraft.

(g) If it is determined by the director that the owner or operator of the impounded aircraft is not current in payments to the department for charges and fees, the department may satisfy its lien out of the proceeds of any sale or auction of the impounded aircraft; provided that any remaining balance of the proceeds of the sale or auction, after deduction of the cost of maintenance, storage, and other costs related to the impoundment and the sale or auction conducted to satisfy the lien, shall be returned to the impounded aircraft owner or operator.

(h) An owner or operator of the impounded aircraft may also obtain immediate possession of the impounded aircraft by paying to the department, without an administrative hearing, all charges and fees owed by the owner or operator of the impounded aircraft and the cost and expense of impounding the aircraft incurred by the department.

(i) If the owner or operator of an impounded aircraft does not:

- (1) Request an administrative hearing within thirty days of the department's impounding of the aircraft; or
- (2) Pay the department all cost and expenses of impounding the aircraft and the charges and fees due and owing within fifteen days of a finding of probable cause that the charges and fees are due and owing,

the aircraft shall be disposed of by public auction, through oral tenders, or by sealed bids, after public notice has been given; provided that the public auction shall not be held less than five days after public notice is given. Where no bid is received, the aircraft may be sold by negotiation, disposed of as junk, or donated to any governmental agency.

(j) Public auction shall not be required when the appraised value of any aircraft, as determined by an independent appraiser who has had at least one year of experience in the sale or purchase of aircraft, is less than \$100. Upon that determination and after public notice is given, the director may sell the aircraft by negotiation, dispose of it as junk, or donate the aircraft to any governmental agency.

(k) The transfer hereunder shall be evidenced by a bill of sale from the department, shall be considered a transfer by operation of law, and shall be governed by provisions applicable thereto.

(l) A purchaser of an aircraft sold to satisfy a lien pursuant to this section shall take the aircraft free of any

rights of persons against whom that lien was valid. [L 1987, c 163, §1; am L 1998, c 2, §74]

" **[\$261-7.6] Use of credit cards to pay for airport charges.** Notwithstanding any other law to the contrary, any payments due and owing to the State for any products or services received from the State at any airport operated by the State may be made by credit card, if prior arrangements have been made by the department for payments through the use of the credit card and the arrangements have been approved by the comptroller. However, credit cards may not be used to make payments under protest pursuant to section 40-35. The maximum charge that may be paid to the department by use of a credit card on any transaction is \$500. [L 1992, c 24, §1]

" **§261-8 Federal aid.** The department of transportation may accept, receive, receipt for, disburse, and expend federal moneys, and other moneys, public or private, made available by grant or loan to accomplish, in whole or in part, any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and expended by the department upon such terms and conditions as are prescribed by the United States, and the department may enter into any contracts which may be required in connection therewith. All moneys received by the department pursuant to this section shall be deposited in the treasury and, unless otherwise prescribed by the authority from which the moneys were received, shall be kept in separate funds designated according to the purpose for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available. [L 1947, c 32, pt of §1; RL 1955, §15-14; am L Sp 1959 2d, c 1, §26; HRS §261-8]

" **§261-9 Contracts, law governing.** The department of transportation may enter into any contracts necessary to the execution of the powers granted it by this chapter. All contracts made by the department shall be made pursuant to the laws of the State governing the making of like contracts; provided that where the planning, acquisition, construction, improvement, maintenance, or operation of any airport, or air navigation facility is financed wholly or partially with federal moneys, the department may let contracts in the manner prescribed by the federal authorities acting under the laws of the United States and any rules or regulations made thereunder. [L 1947, c 32, pt of §1; RL 1955, §15-15; am L Sp 1959 2d, c 1, §26; HRS §261-9]

Case Notes

Cited: 47 H. 495, 497, 393 P.2d 87.

" **§261-10 Exclusive rights prohibited.** The department of transportation shall grant no exclusive right for the use of an airway, landing area, or air navigation facility under its jurisdiction. This section shall not prevent the making of contracts, leases, and other arrangements pursuant to section 261-7. [L 1947, c 32, pt of §1; RL 1955, §15-16; am L Sp 1959 2d, c 1, §26; HRS §261-10]

Cross References

Concessions on public property, see chapter 102.

Public contracts, see chapters 103 and 103D.

" **§261-11 Public purpose of activities.** The acquisition of any lands or interests therein pursuant to this chapter, the planning, acquisition, establishment, construction, improvement, maintenance, equipment, and operation of airports and air navigation facilities; and the exercise of any other powers granted by this chapter to the department of transportation are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the State in the manner and for the purposes enumerated in this chapter shall and are declared to be acquired and used for public and governmental purposes and as a matter of public necessity. [L 1947, c 32, pt of §1; RL 1955, §15-17; am L Sp 1959 2d, c 1, §26; HRS §261-11]

" **§261-12 Rules, standards.** (a) Powers to adopt. The director of transportation may perform such acts, issue and amend such orders, adopt such reasonable general or special rules and procedures, and establish such minimum standards, consistent with this chapter, as the director deems necessary to carry out this chapter and to perform the duties assigned thereunder, all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons operating, using, or traveling in aircraft, and the safety of persons and property on land or water, and developing and promoting aeronautics in the State.

In furtherance of the duties assigned under this chapter, the director may adopt rules relating to:

- (1) Safety measures, requirements and practices in or about the airport premises;

- (2) The licensing and regulation of persons engaged in commercial activities in or about the airport premises;
- (3) The regulation of equipment and motor vehicles operated in or about the airport operational area;
- (4) Airport security measures or requirements, and designation of sterile passenger holding areas and operational areas;
- (5) The regulation of motor vehicles and traffic;
- (6) Any other matter relating to the health, safety and welfare of the general public and persons operating, using, or traveling in aircraft.

(b) [Tour aircraft operations.] Any other law to the contrary notwithstanding, no tour aircraft operation shall be permitted in any airport under the State's control without having a permit. The director shall adopt rules to regulate tour aircraft operations by permit which shall include but not be limited to:

- (1) Identification of the types of aircraft to be utilized;
- (2) The number of operations daily for each type of aircraft used and the days and hours of operation;
- (3) Verification that the applicant is in compliance with all state statutes, including but not limited to this section;
- (4) Verification that the applicant has the Federal Aviation Administration certificate 121 or 135;
- (5) A written assessment by the department of the impact to the surrounding area and to the subject state airport;
- (6) Revocation of a permit based on the failure to comply with the information provided by the applicant and the terms and conditions set forth by the department in the permit; and any false statement or misrepresentation made by the applicant;
- (7) Establishment of penalties for revocation and suspension of a permit for failure to comply with permit conditions;
- (8) Annual renewal of permits; and
- (9) Any change of operations under the existing permit to be approved by the director.

No permit shall be authorized unless accompanied by a Hawaii sectional aeronautical chart marked to indicate routes and altitudes to be used in conducting aerial tours and noise abatement procedures to be employed in the vicinity of identified noise sensitive areas.

For the purposes of this subsection, "tour aircraft operations" means any business operation which offers aircraft for hire by passengers for the purpose of aerial observation of landmarks and other manmade or natural sites within an island of the State, and for the purpose of transporting passengers for tourist-related activities.

(c) Definitions. For the purpose of this section, if not inconsistent with the context:

"Sterile passenger holding area" means any portion of a public airport designated by the director and identified by appropriate signs as an area into which access is conditioned upon the prior inspection of persons and property in accordance with the approved Federal Aviation Administration air carrier screening program.

"Operational area" means any portion of a public airport, from which access by the public is prohibited by fences or appropriate signs, and which is not leased or demised to anyone for exclusive use and includes runways, taxiways, all ramps, cargo ramps and apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of a public airport used or intended to be used for landing, takeoff or surface maneuvering of aircraft or used for embarkation or debarkation of passengers.

Notwithstanding the restriction on access by the public into operational areas, entry may be authorized for airport operational area related purposes with the prior permission of the director or the director's duly authorized representative.

(d) Conformity to federal legislation and rules. No rules, orders, or standards prescribed by the director shall be inconsistent with, or contrary to, any act of the Congress of the United States or any regulation promulgated or standard established pursuant thereto.

(e) How made. All rules having the force and effect of law, shall be adopted by the director pursuant to chapter 91.

(f) Distribution. The director shall provide for the publication and general distribution of all of its rules and procedures having general effect. [L 1947, c 32, pt of §1; RL 1955, §15-18; am L Sp 1959 2d, c 1, §26; am L 1965, c 96, §11; HRS §261-12; am L 1980, c 155, §1; gen ch 1985; am L 1988, c 397, §2; am L 1992, c 206, §1; am L 2001, c 55, §10; am L 2015, c 24, §1]

Case Notes

Cited: 47 H. 495, 498, 393 P.2d 87.

" **§261-13 Orders, notice, and opportunity for hearings, judicial review.** (a) Every order of the director of transportation requiring performance of or desistance from certain acts or compliance with certain requirements and any denial or revocation of an approval, certificate, or license or refusal of a renewal thereof, (1) shall be in such form as required by section 91-12, (2) shall be made only after reasonable notice and an opportunity to be heard in conformity with chapter 91, and (3) shall be served upon the persons affected either by registered or certified mail with return receipt requested or in person.

(b) In every case where reasonable notice and opportunity for hearing are required under this section, the director shall, on not less than five days' notice personally served, or seven days' notice by registered or certified mail (to be computed from the date of mailing of the notice), specify the matters prescribed in section 91-9; provided that in cases of emergency where the public interest so requires the amount of notice may be shortened, or a temporary order may be issued pending the holding of the hearing. To the extent practicable, hearings on these matters shall be held in the county where the affected person resides or does business.

(c) Any person aggrieved by an order of the director or by the grant, denial, or revocation of any approval, license, or certificate, or refusal of a renewal thereof, may obtain a review thereof by the circuit court of the circuit in which that person resides or does business in the manner provided in chapter 91 for review of orders in contested cases. Upon application of either party, the court may assign the appeal for hearing at the earliest possible date.

Appeals may be taken and had in the manner provided for a review of a civil judgment of a circuit court.

Upon the final termination of any judicial review, the director shall enter an order or take other action in accordance with the mandate of the court. [L 1947, c 32, pt of §1; RL 1955, §15-19; am L 1965, c 96, §12; HRS §261-13; am L 2004, c 202, §26; am L 2006, c 94, §1; am L 2010, c 109, §1]

Rules of Court

Appeal to circuit court, see HRCP rule 72; appeals, see Hawaii Rules of Appellate Procedure.

Case Notes

Award of concession under §261-7(a)(2) is not within purview of subsection (c) and no appeal lies. 47 H. 495, 393 P.2d 87.

License refers to license for an airport pursuant to §261-16(b). It does not refer to a license conferring the privilege of supplying goods, services, etc., under §261-7(a)(2). 47 H. 495, 393 P.2d 87.

" **§261-13.5 Promotion of safety and efficient use of facilities where congestion occurs.** (a) The legislature recognizes that air traffic congestion constitutes a serious safety problem and reduces the efficient and effective use of limited airspace and terminal facilities. The legislature also recognizes that the development of additional airports will assist in the solution to such safety and efficiency problems, but that such development may not always be a feasible or complete solution to such problems.

Nevertheless, the legislature is determined that all possible actions be taken to promote safety, to alleviate safety hazards and to reduce congestion at airports under the State's control. The department of transportation shall do everything within its authority to enhance the safe use of the State's airports and shall cooperate with appropriate federal agencies and other affected parties to assist said agencies in meeting their responsibility to alleviate safety hazards resulting from air traffic congestion. In carrying out this responsibility, the department shall consider all possible alternatives including but not limited to reliever airports and limiting the number of aircraft allowed to use state airports. The department shall take appropriate action to enhance safety and to alleviate safety hazards, or, if legislative action is required, make appropriate recommendations to the legislature.

(b) To the fullest extent possible within the State's authority to act in the area of airport and air traffic safety, the department of transportation shall be responsible for promoting safe operating conditions and alleviating safety hazards due to air traffic congestion at airports under its control. To this end, the department, in close cooperation with appropriate federal authorities and other affected parties, shall examine and conduct research into the causes of and solutions for safety problems at such airports, especially those problems associated with air traffic congestion. Pursuant to sections 261-12 and 261-13, the director shall adopt such rules and standards which may include the assignment of particular runways for particular uses, the establishment of the number and types of aircraft allowed to use each public airport, and the use of similar measures where such actions may contribute to the segregation of different types of aircraft and to the reduction of peak air traffic usage at airports under state control. [L 1980, c 308, §1; am L 1994, c 62, §2]

" **[\$261-13.6] Helicopter master plan; advisory committee.**

(a) The legislature recognizes that air traffic congestion on the ground constitutes a serious safety problem and reduces the efficient and effective use of the limited space in airport facilities. The legislature also recognizes the increased use of airport facilities by helicopters for commercial purposes.

The legislature is determined to ensure that all possible actions are taken to promote safety, alleviate safety hazards, and reduce congestion at airports under the State's control. The department of transportation shall do everything within its authority to enhance the safe use of the State's airports and shall cooperate with appropriate federal agencies and other affected parties to assist the agencies in meeting their responsibilities to alleviate safety hazards. In carrying out this responsibility, the department shall develop and implement a master plan, hereinafter referred to as the "helicopter master plan", for helicopter operations for each airport under the State's control.

(b) The director shall adopt a helicopter master plan for each state airport that shall include but not be limited to:

- (1) The extent, type, nature, location, and timing of helicopter operations and helicopter facilities development at each state airport;
- (2) The layout plans of existing and proposed helicopter facilities at each state airport;
- (3) The determination of the maximum number of helicopters that can be accommodated at each state airport;
- (4) The determination of the extent of emergency services, maintenance, and operations at each state airport; and
- (5) An assessment of impact on surrounding areas.

(c) The director shall not make or permit any addition or alteration to any helicopter facilities at any state airport other than those additions or alterations in conformity with the helicopter master plan for that state airport.

(d) The helicopter master plan shall be submitted to the legislature no later than twenty days prior to the convening of the regular session of 1989, and thereafter shall be formally reviewed every five years.

(e) There is established an advisory committee within each county which shall sit in an advisory capacity to the director on matters relating to the helicopter master plan for each state airport. Each advisory committee shall consist of not more than thirteen members to be appointed by the director and whose membership shall include representatives from the helicopter industry and the communities adjacent to the airport. Each advisory committee shall be placed for administrative purposes

only, within the department of transportation. Each member of an advisory committee shall serve without compensation.

(f) For the purposes of this section, "helicopter operation" means the operation of a helicopter company from an airport under the State's control. [L 1988, c 397, §1]

" **§261-14 Federal-state joint hearings, reciprocal services, accident reporting.** (a) Joint hearings. The department of transportation may confer with or hold joint hearings with any agency of the United States in connection with any matter arising under this chapter, or relating to the sound development of aeronautics.

(b) Reciprocal services. The department may avail itself of the cooperation, services, records, and facilities of the agencies of the United States as fully as may be practicable in the administration and enforcement of this chapter. The department shall furnish to the agencies of the United States, its cooperation, services, records, and facilities, insofar as may be practicable.

(c) Accident reporting. The department shall report to the appropriate agency of the United States all accidents in aeronautics in the State of which it is informed, and shall insofar as practicable preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until the federal agency institutes an investigation. [L 1947, c 32, pt of §1; RL 1955, §15-20; am L Sp 1959 2d, c 1, §26; HRS §261-14]

" **§261-15 Federal airman and aircraft certificates.** (a) Operation without, unlawful. It shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within the State unless the aircraft has an appropriate effective certificate, permit, or license issued by the United States, if the certificate, permit, or license is required by the United States. It shall be unlawful for any person to engage in aeronautics as an airman in the State unless the person has an appropriate effective airman certificate, permit, rating, or license issued by the United States authorizing the person to engage in the particular class of aeronautics in which the person is engaged, if such certificate, permit, rating, or license is required by the United States.

(b) Exhibition of certificates. Where a certificate, permit, rating, or license is required for an airman by the United States, it shall be kept in the airman's personal possession when the airman is operating within the State and shall be presented for inspection upon the demand of any public officer, or any other officer of the State or of a municipality

or member, official, or employee of the department of transportation authorized pursuant to section 261-17 to enforce the aeronautics laws, or any official, manager, or person in charge of any airport upon which the aircraft lands, or upon the reasonable request of any person. [L 1947, c 32, pt of §1; RL 1955, §15-21; am L Sp 1959 2d, c 1, §26; HRS §261-15; gen ch 1985]

" **[\$261-15.5] Aircraft registration.** Unless an aircraft is exempted by this section, no person shall operate or cause or authorize to be operated any aircraft at an airport owned or controlled by the department, unless the aircraft has a certificate of registration issued in accordance with rules adopted by the department. Aircraft exempt from registration required by this section include:

- (1) Aircraft operating primarily in interstate or foreign commerce;
- (2) Aircraft owned or operated by the United States;
- (3) Aircraft in transit through the State; and
- (4) Aircraft operated by any scheduled airline carrier which is a lessee of the State under an airport-airline lease at the Honolulu International Airport and which is commonly referred to as signatory airline. [L 1985, c 299, pt of §1]

" **[\$261-15.6] Annual registration fee.** The department shall assess and collect an annual registration fee of \$10 from each operator of aircraft required to be registered under section 261-15.5. [L 1985, c 299, pt of §1]

" **[\$261-15.7] Failure to register.** (a) All aircraft, unless exempted, shall be registered within the time prescribed by rules adopted by the director.

(b) Failure to comply with the registration requirements shall subject the operator of the aircraft to:

- (1) A penalty of not more than \$100 per aircraft;
- (2) The denial of the use of the airport facilities; and
- (3) Removal of the aircraft to a location designated pursuant to rules adopted by the director.

(c) The director is authorized to adopt rules pursuant to chapter 91 to effectuate the purposes of sections 261-15.5 to 261-15.7. [L 1985, c 299, pt of §1]

" **§261-16 Licensing of airports.** (a) Site approvals. Except as provided in subsection (d) of this section, the department of transportation may provide for the approval of airport sites and the issuance of certificates of the approvals.

No charge shall be made for any approval. Upon the promulgation of a rule or regulation providing for such approvals, any person desiring or planning to construct or establish an airport may, before the acquisition of the site or before the construction or establishment of the proposed airport, make application to the department for approval of the site. The department shall with reasonable dispatch issue a certificate granting approval of a site if it is satisfied (1) that the site is adequate for the proposed airport; (2) that the proposed airport, if constructed or established, will conform to minimum standards of safety; and (3) that safe air traffic patterns can be worked out for the proposed airport and for all existing airports and approved airport sites in its vicinity. An approval of a site may be granted subject to any reasonable conditions which the department may deem necessary to effectuate the purposes of this section, and shall remain in effect, unless sooner revoked by the department, until a license for an airport located on the approved site has been issued pursuant to subsection (b) of this section. The department may, after notice and opportunity for hearing to a holder of a certificate of approval, revoke the approval when it shall reasonably determine (1) that there has been an abandonment of the site as an airport site, or (2) that there has been a failure within the time prescribed, or if no time was prescribed, within a reasonable time, to develop the site as an airport or to comply with the conditions of the approval, or (3) that because of change of physical or legal conditions or circumstances the site is no longer usable for the aeronautical purposes for which the approval was granted.

(b) Licenses. Except as provided in subsection (d), the department may provide for the licensing of airports and the annual renewal of such licenses. It may charge license fees not exceeding \$100 for each original license, and not exceeding \$10 for each renewal thereof. Upon the promulgation of a rule or regulation providing for the licensing, the department shall with reasonable dispatch, upon receipt of an application for an original license and the payment of the duly required fee therefor, issue an appropriate license if it is satisfied that the airport conforms to minimum standards of safety and that safe air traffic patterns can be worked out for the airport and for all existing airports and approved airport sites in its vicinity. All licenses shall be renewable annually upon payment of the fees prescribed. Licenses and renewals thereof may be issued subject to any reasonable conditions that the department may deem necessary to effectuate the purposes of this section. The department may, after notice and opportunity for hearing to the licensee, revoke any license or renewal thereof, or refuse to issue a renewal, when it shall reasonably determine (1) that

there has been an abandonment of the airport as such, or (2) that there has been a failure to comply with the conditions of the license or renewal thereof, or (3) that because of change of physical or legal conditions or circumstances, the airport has become either unsafe or unusable for the aeronautical purposes for which the license or renewal was issued. It shall be unlawful for any person to operate an airport without an appropriate license for such, as may be duly required by rule or regulation issued pursuant to this subsection.

(c) Public hearings. In connection with the grant of approval of a proposed airport site or the issuance of an airport license under subsections (a) and (b) of this section, the department may, on its own motion or upon the request of an affected or interested person, hold a hearing open to the public, and shall hold a hearing when and as required by section 261-13.

(d) Exemptions. The requirements of this section as to site approvals and licenses shall not apply to airports owned or operated by the United States. The department may, from time to time, to the extent necessary, exempt any other class of airports, pursuant to a reasonable classification or grouping, from any rule or regulation promulgated under this section or from any requirement of such a rule or regulation, if it finds that the application of the rule, regulation, or requirement would be an undue burden on such class and is not required in the interest of public safety. [L 1947, c 32, pt of §1; RL 1955, §15-22; am L Sp 1959 2d, c 1, §26; HRS §261-16]

Case Notes

Cited: 47 H. 495, 497, 393 P.2d 87.

" **§261-17 Enforcement of laws.** (a) The director of transportation, officers, and employees of the department of transportation, and every state and county officer charged with the enforcement of state laws and ordinances, shall enforce and assist in the enforcement of this chapter and of all rules and orders issued pursuant thereto and of all other laws of the State; and in that connection each of the persons may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where airports, air navigation facilities, or other aeronautical activities are operated or conducted. In aid of the enforcement of this chapter, the rules and orders issued pursuant thereto, and all other laws of the State, the powers of police officers are conferred upon the director, and such of the officers, employees, agents, and representatives of the department as may be designated by the

director to exercise such powers, including the power to serve and execute warrants and arrest offenders, and the power to serve notices and orders. For the purposes of this subsection the term "agents and representatives" includes persons performing services at airports under contract with the department.

(b) No person shall provide or be hired to provide armed security services at airports within the State without first submitting statements signed under penalty of false swearing by the person indicating whether the person has ever been convicted of a crime which, by law, would preclude the person from carrying or using a firearm in the course of the person's employment, including a felony conviction in the State or elsewhere, and providing consent to the department to have a criminal history record check conducted by the Federal Bureau of Investigation to obtain criminal history record information. The person shall also be fingerprinted for the purpose of a Federal Bureau of Investigation criminal history record check. The Hawaii criminal justice data center may also assess the existing providers of armed security services at airports within the State, or their employees or applicants for employment, or any applicant for employment to provide armed security services at airports within the State, a reasonable fee for each criminal history record check performed by the Federal Bureau of Investigation.

(c) The department may, in the name of the State, enforce this chapter and the rules and orders issued pursuant thereto by injunction or other legal process in the courts of the State. [L 1947, c 32, pt of §1; RL 1955, §15-23; am L Sp 1959 2d, c 1, §26; HRS §261-17; am L 1973, c 20, §1; am L 1979, c 179, §1; am L 1996, c 191, §2]

" **[§261-17.5] Arrest or citation.** Except when required by state law to take immediately before a district judge a person arrested for a violation of any provision of this chapter, including any rule or regulation adopted and promulgated pursuant to this chapter, any person authorized to enforce the provisions of this chapter, hereinafter referred to as enforcement officer, upon arresting a person for violation of any provision of this chapter, including any rule or regulation adopted and promulgated pursuant to this chapter shall, in the discretion of the enforcement officer, either (1) issue to the purported violator a summons or citation, printed in the form hereinafter described, warning the purported violator to appear and answer to the charge against the purported violator at a certain place and at a time within seven days after such arrest,

or (2) take the purported violator without unnecessary delay before a district judge.

The summons or citation shall be printed in a form comparable to the form of other summonses and citations used for arresting offenders and shall be designed to provide for inclusion of all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.

The original of a summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution for the original and any other copies.

Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.

Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer, upon the person's arrest for violation of any provision of this chapter, including any rule or regulation promulgated pursuant to this chapter, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than \$1,000, or be imprisoned not more than six months, or both.

In the event any person fails to comply with a summons or citation issued to such person, or if any person fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against such person and secure the issuance of a warrant for the person's arrest. [L 1970, c 151, §1 and c 188, §39; gen ch 1985]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§261-17.6 Parking control at airports.** (a) The director may enforce airport rules pertaining to vehicle parking at airports by imposing fines not to exceed \$50 per violation or by removing the vehicle of the offender from the area within the airport's jurisdiction, or both; provided that a person violating any provision of part III of chapter 291, or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined or otherwise penalized in accordance with part III of chapter 291.

(b) Written notice of the removal of any vehicle shall immediately be sent by registered or certified mail, with a return receipt, to the legal and registered owner of the vehicle

at the address on record at the vehicle licensing division. The notice shall contain a brief description of the vehicle, the location of custody, and intended disposition of the vehicle if not repossessed within thirty days after the mailing of the notice. A notice need not be sent to a legal or registered owner or to any person with an unrecorded interest in the vehicle whose name or address cannot be determined.

(c) Any vehicle not repossessed within the time limits provided in subsection (b) after compliance by the department with the notice requirements provided by that subsection, shall be disposed of by public auction, through oral tenders, or by sealed bids, after public notice has been given; provided that the public auction shall not be held less than five days after public notice has been given. Where no bid is received, the vehicle may be either sold by negotiation, disposed of or sold as junk, or donated to any governmental agency; and further provided that the requirements of public auction may be waived when the appraised value of any vehicle is less than \$100 as determined by an independent appraiser who has had at least one year of experience in the sale or purchase of motor vehicles as a licensed motor vehicle salesperson. In that event the vehicle, after public notice has been given, may be disposed of in the same manner as when a vehicle is put up for public auction and for which no bid is received.

(d) Any person entitled to the vehicle may repossess the same prior to the date of public auction upon payment of all towing, handling, storage, appraisal, advertising, and any other expenses incurred in connection with the vehicle. If the person claiming the vehicle is not the legal or registered owner, the person may repossess the vehicle upon paying the foregoing expenses and posting adequate security not to exceed the value of the vehicle. The security, if not forfeited, shall be returned two years from receipt.

(e) The transfer of title and interest by sale pursuant to the provisions of this section shall be considered a transfer by operation of law and shall be governed by provisions applicable thereto; provided that in the event the certificate of ownership or registration is unavailable, the bill of sale executed by the director or the director's authorized representative is satisfactory evidence authorizing the transfer of such title or interest.

(f) All proceeds from the sale of vehicles shall be deposited into the airport revenue fund. The legal or registered owner is entitled to recover the excess of the proceeds from the sale over expenses, if the claim is filed with the department within sixty days from the execution of the sales agreement. The legal owner shall receive priority of payment to

the extent of the legal owner's lien on the vehicle. The department may file a claim within the same period against the legal or registered owner or person with an unrecorded interest for the deficiencies between the sale proceeds and expenses.

(g) A vehicle shall be deemed a derelict by the director under any one of the following conditions:

- (1) If the certificate of registration of the vehicle has expired and the registered and legal owner no longer resides at the address listed on the last certificate of registration on record with the county director of finance;
- (2) If the last registered and legal owner of record disclaims ownership;
- (3) If essential major parts have been removed so as to render the vehicle inoperable, and the vehicle identification numbers, license number plates, and other means of identification have been removed so as to nullify efforts to locate or identify the registered and legal owner; or
- (4) If the vehicle registration records of the county director of finance contain no record that the vehicle has ever been registered in the county.

(h) A derelict vehicle may be immediately disposed of or sold as junk without having to comply with the requirements of subsections (b) through (f). [L 1980, c 49, §1; gen ch 1985, 1993; am L 1997, c 308, §4; am L 1998, c 2, §75]

" **§261-17.7 Lost and found money or property at airports.**

(a) All money or property found at an airport owned or controlled by the department shall be reported or delivered by the finder to the airport lost and found, and when so delivered shall be held by the department for forty-five days or until claimed by some person who establishes title or right of custody thereto to the satisfaction of the department. In the event of the establishment of title or right of custody, the money or property shall be delivered to the claimant by the director or the director's agent. If within forty-five days no claimant establishes a right to the money or property, the money or property shall be returned to the person who delivered it to the airport lost and found; provided that if the person who delivered it to the airport lost and found fails to claim the money or property within thirty days after being notified by the director, the director shall deposit the money into the state treasury to the credit of the airport revenue fund or shall dispose of the property by public auction.

(b) At least once annually, the director shall give public notice giving details as to time and place of the auction and

giving notice to all persons interested or claiming the property that unless claims are made by persons who can provide satisfactory proof of ownership before a specified date, the property will be sold at public auction to the highest bidder. On the day and at the place specified in the notice, all property for which no satisfactory proof of ownership is made shall be sold by auction by or under the direction of the director.

If any property which is of a perishable nature or unreasonably expensive to keep or safeguard remains unclaimed at the airport, the director may sell that property at public auction, at a time and after notice that is reasonable under the circumstances. The director shall immediately after the sale of any property pay to the airport revenue fund all moneys received by the director upon sale.

(c) For the purpose of this section, notice by regular mail to the last known address of the person who delivered the money or property to the airport lost and found shall be deemed sufficient. [L 1980, c 81, §1; gen ch 1985; am L 1998, c 2, §76]

" **§261-18 Hazard pay for employees.** Any employee of the airports division of the department of transportation who performs fire, crash, or any other aircraft emergency rescue duties, in addition to the employee's regular assignment, shall receive hazard pay in accordance with the following schedule:

- (1) \$25 for each and every drill attended;
- (2) \$20 for each and every response to a fire, crash, or any other aircraft emergency rescue call-out which results in stand by duty only;
- (3) For any fire, crash, or other aircraft emergency rescue call-out resulting in the actual participation in rescue operations, \$50 for the first hour or fraction thereof, and \$20 for each additional hour or fraction thereof.

Hazard pay shall be paid out of the special funds of the airports division of the department. [L 1964, c 54, §§2, 3; Supp, §15-6.5; HRS §261-18; gen ch 1985; am L 1990, c 148, §1]

" **§261-19 Exchange of violations information.** The department of transportation may report to the appropriate federal agencies and agencies of the states and territories of the United States all proceedings instituted charging violation of section 261-15, 263-9, or 263-11, and all penalties, of which it has knowledge, imposed upon airmen or the owners or operators of aircraft for violations of the laws of the State relating to aeronautics or for violations of the rules, regulations, or orders of the department. The department may receive reports of

penalties and other data from agencies of the federal government, the states, and territories of the United States and, when necessary, enter into agreements with federal agencies and the agencies of such states and territories governing the delivering, receipt, exchange, and use of reports and data. The department may make the reports and data of the federal agencies, the agencies of the states and territories, and the courts of the State available, with or without request therefor, to any and all courts of the State, and to any officer of the State or of a municipality authorized pursuant to section 261-17 to enforce the aeronautics law. [L 1947, c 32, pt of §1; RL 1955, §15-25; am L Sp 1959 2d, c 1, §26; HRS §261-19]

" **§261-20 Department proceedings and reports.** The department of transportation shall report in writing to the governor immediately following the end of each fiscal year. The report shall contain a summary of its proceedings during the preceding fiscal year, a detailed and itemized statement of all revenue and of all expenditures made by or in behalf of the department during the preceding fiscal year, an estimate of anticipated revenues and expenses for the next succeeding fiscal year, such other information as it may deem necessary or useful, and any additional information which may be requested by the governor. The fiscal year of the department shall conform to the fiscal year of the State. [L 1947, c 32, pt of §1; am L 1949, c 360, pt of §2; RL 1955, §15-4; am L Sp 1959 2d, c 1, §26; HRS §261-20]

" **§261-21 Penalties.** (a) Except as provided in subsection (c), any person violating this chapter, or any of the rules or orders issued pursuant thereto and relating to:

- (1) Safety measures, practices, or requirements;
- (2) Airport security measures or requirements; or
- (3) The licensing and regulation of persons engaged in commercial activities at public airports,

duly adopted or served, shall be guilty of a misdemeanor.

(b) Except as provided in subsection (c), any person violating any rule relating to motor vehicles and traffic control or the operation of any equipment or motor vehicle in or on the operational area of the airport shall be guilty of an offense as defined under the Penal Code and be fined not more than \$500.

(c) Any person violating any rule relating to parking of motor vehicles or equipment at a public airport, including baggage carts, dollies, and other similar devices, shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions

contained therein. [L 1947, c 32, pt of §1; RL 1955, §15-24; HRS §261-21; am L 1980, c 155, §2; am L 1996, c 37, §1; am L 1997, c 68, §1; am L 2008, c 101, §5]


"AIRPORTS


§261-22 Hilo International Airport. The official name of the airport situated at Waiakea, Hilo, Hawaii, shall be Hilo International Airport. The main passenger terminal at Hilo International Airport shall be designated "General Lyman Terminal" in memory of Brigadier General Albert Lyman, the first person of Hawaiian ancestry to attain such rank in the United States Army. [L 1943, JR 5; RL 1945, §4931; RL 1955, §15-26; HRS §261-22; am L 1989, c 59, §1]

" **§261-23 Honolulu International Airport.** All that area set aside by executive order No. 1016 for John Rodgers Airport and Keehi Lagoon Seaplane Harbor to be under the control and management of the superintendent of public works under date of April 12, 1943, is designated as "Honolulu International Airport". [L 1947, c 31, §1; am L 1951, c 3, §1; RL 1955, §15-27; HRS §261-23]

" **§261-24 John Rodgers Terminal.** When a new transpacific terminal building is constructed, it shall be designated "John Rodgers Terminal" in memory of the late Commander John Rodgers, United States Navy, who made the first flight in a Navy flying boat to these islands in September, 1925. [L 1947, c 31, §2; RL 1955, §15-28; HRS §261-24]

" **§261-25 REPEALED.** L 1989, c 58, §1.

 " **§261-26 Ellison Onizuka Kona International Airport at Keahole.** [Section effective January 1, 2017. For section effective until December 31, 2016, see below.] The official name of the airport situated at Keahole in Kona, Hawaii shall be the Ellison Onizuka Kona International Airport at Keahole. [L 1993, c 53, §1; am L 1997, c 122, §1; am L 2016, c 256, §1]

 **§261-26 Kona International Airport at Keahole.** [Section effective until December 31, 2016. For section effective January 1, 2017, see above.] The official name of the airport situated at Keahole-Kona, Hawaii shall be the Kona International Airport at Keahole. [L 1993, c 53, §1; am L 1997, c 122, §1]

" **[\$261-27] Kawaihapai Airfield.** The official name of the airfield located at Kawaihapai, formerly known as Dillingham Airfield, shall be Kawaihapai Airfield. [L 2001, c 276, §1]

"AIRPORT RELOCATION

[\$261-31] Definitions. When used in sections 261-31 to 261-36:

"Business" means any lawful activity conducted (1) primarily for the purchase and resale, manufacture, processing, or marketing of products, commodities or any other personal property; (2) primarily for the sale of services to the public; or (3) by a nonprofit organization.

"Director" means the state director of transportation.

"Displaced person" means any person who is required to move from any real property on or after September 1, 1969 as a result of the acquisition of such real property for airport purposes or as the result of the acquisition for airport purposes of other real property on which such person is conducting a business or farm operation.

"Family" means two or more individuals living together in the same dwelling unit who are related to each other by blood, marriage, adoption, or legal guardianship.

"Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

"Person" means (1) any individual, partnership, corporation or association which is the owner of a business; (2) any owner, part owner, tenant, or sharecropper operating a farm; (3) the head of a family; or (4) an individual not a member of a family. [L 1970, c 165, pt of §2]

Revision Note

Definitions rearranged.

"September 1, 1969" substituted for the "effective date of this Part".

" **§261-32 Assistance for displaced person, families, businesses and nonprofit organization.** (a) The director may compensate any person, family, business, or nonprofit organization for actual and reasonable moving expenses incurred as a result of being displaced by any land acquisition program of the State for any airport purpose.

(b) Any displaced person who moves from a dwelling who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) may receive:

(1) A moving expense allowance, determined according to a schedule established by the director not to exceed \$200;

(2) A dislocation allowance in the amount of \$100.

(c) Any displaced person who moves or discontinues the person's business or farm operations who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a), may receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, or \$5,000, whichever is the lesser. In the case of a business no payment shall be made under this subsection unless the director is satisfied that the business: (1) cannot be relocated without a substantial loss of its existing patronage; and (2) is not part of a commercial enterprise having at least one other establishment, not being acquired by the State which is engaged in the same or similar business.

(d) In addition to any payments authorized in subsection (a) and (c), the director may provide relocation assistance to any displaced person who moves a business as a result of any land acquisition program of the State for any airport use.

(e) The director may enter into leases, licenses, and other arrangements with any displaced person granting the use or occupancy of any lands or property under the department's jurisdiction. The director may allow any lessee of a site acquired by the department to remain on the site, and may enter into a new lease with such person granting the use of the site; provided that the term of the new lease shall not exceed the time remaining on the lease terminated by the acquisition. Any lease issued pursuant to this section shall be issued through negotiation, under mutually agreeable terms, conditions, and lease rent, without regard to the limitations set forth in chapter 171.

(f) The director shall include the costs specified in this section as a part of the cost of construction of the airport for which the land acquisition program is initiated. [L 1970, c 165, pt of §2; gen ch 1985; am L 1990, c 274, §4]

" **§261-33 Replacement housing.** (a) In addition to any amount authorized herein as part of the cost of construction of the airport for which land acquisition is initiated, the director shall make a payment to the owner of real property improved by a single-family, two-family, or three-family dwelling actually owned and occupied by the owner for not less

than one year prior to the first written offer by the department of transportation for the acquisition of such property. Such payment, not to exceed \$5,000, shall be the amount, if any, which when added to the acquisition payment, equals the average price required for a comparable dwelling determined, in accordance with standards established by the director to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and places of employment, and available on the private market. Such payment shall be made only to a displaced owner who purchases and occupies a dwelling within one year subsequent to the date on which the displaced owner is required to move from the dwelling acquired for the project.

(b) In addition to amounts otherwise authorized by this section and section 261-32, the director shall make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under subsection (a) which dwelling was actually and lawfully occupied by such individual or family for not less than ninety days prior to the first written offer by the department of transportation for acquisition of such property. Such payment, not to exceed \$1,500, shall be the amount which is necessary to enable such person to lease or rent for a period not to exceed two years, or to make the downpayment on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities. [L 1970, c 165, pt of §2; gen ch 1985; am L 1986, c 339, §25]

" **§261-34 Not treated as income.** No payment received under sections 261-32 and 261-33 shall be considered as income for purposes of the state income tax law; nor shall such payments be considered as income to any recipient of public assistance, and such payment shall not be deducted from the amount of aid to which the recipient would otherwise be entitled to under the state welfare programs. [L 1970, c 165, pt of §2; am L 1986, c 339, §26]

" **[§261-35] Decision of director.** The written decision of the director shall be final. [L 1970, c 165, pt of §2]

" **[§261-36] Rules and regulations.** The director may adopt rules and regulations to carry out the purposes of sections 261-31 to 261-36 and may adopt all or any part of applicable federal rules and regulations which are necessary or desirable to obtain federal assistance in making payments hereunder. [L 1970, c 165, pt of §2]

"SPECIAL FACILITY PROJECTS

§261-51 Definitions. For the purpose of this part, if not inconsistent with the context:

"Remodeling" includes reconstruction, renovation, rehabilitation, improvement, betterment or extension of a special facility.

"Special facility" means one or more buildings, structures or facilities and the land thereof for the servicing of aircraft, for aeronautics, for air cargo operations, for airports or for the comfort, accommodation and convenience of air travelers and airline employees which is the subject of a special facility lease.

"Special facility lease" includes a contract, lease or other agreement, or any combination thereof, the subject matter of which is the same special facility. [L 1971, c 160, pt of §1; am L 1999, c 14, §1]

" **§261-52 Powers.** In addition and supplemental to the powers granted to the department by law, the department may:

- (1) With the approval of the governor, enter into a special facility lease or an amendment or supplement thereto whereby the department agrees to construct, acquire, or remodel and furnish or equip a special facility solely for the use by another person to a special facility lease;
- (2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield the amount of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility, including the costs of acquisition of the site thereof; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this paragraph shall not exceed \$200,000,000; provided further that these funds shall not be expended on nonpublic air facilities;
- (3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds which may be issued as provided in paragraph (2);

- (4) Perform and carry out the terms and provisions of any special facility lease;
- (5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and furnish or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease;
- (6) Construct any special facility on land owned by the State; provided that no funds derived herein will be expended for land acquisition; and
- (7) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person. [L 1971, c 160, pt of §1; am L 1977, c 29, §1; am L 1982, c 146, §1; am L 1991, c 168, §1; am L Sp 1993, c 8, §55; am L 1998, c 284, §1; am L 2004, c 216, §32]

" **[§261-53] Findings and determination for special facility leases.** The department shall not enter into any special facility lease unless the department at or prior to the entering into of such special facility lease shall find and determine: (1) that the building, structure or facility which is to be the subject of such special facility lease will not be used to provide services, commodities, supplies or facilities which are then adequately being made available through the airports system of the State; (2) that the result of the use or occupancy of such building, structure or facility under such special facility lease would not result in the reduction of the revenues derived from the airports system to an amount below the amount required to be derived therefrom by section 39-61; and (3) that the entering into of such special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or certificate authorizing any bonds of the State then outstanding. [L 1971, c 160, pt of §1]

Revision Note

Section "39-61" substituted for "39-59".

" **§261-54 Special facility lease.** (a) In addition to the conditions and terms set forth in this part, any special facility lease entered into by the department shall at least contain provisions obligating the other person to the special facility lease:

- (1) To pay to the department during the initial term of the special facility lease, whether the special facility is capable of being used or occupied or is being used or occupied by the other person, a rental or rentals at the time or times and in the amount or amounts that will be sufficient: to pay the principal and interest on all special facility revenue bonds issued for the special facility, to establish or maintain any reserves for these payments, and to pay all fees and expenses of the trustees, paying agents, transfer agents, and other fiscal agents for the special facility revenue bonds issued for the special facility;
- (2) To pay to the department:
 - (A) A ground rental, equal to the fair market rental of the land, if the land on which the special facility is located was not acquired from the proceeds of the special facility revenue bonds; or
 - (B) A properly allocable share of the administrative costs of the department in carrying out the special facility lease and administering the special facility revenue bonds issued for the special facility, if the land was acquired from the proceeds of the special facility revenue bonds;
- (3) To either operate, maintain, and repair the special facility and pay the costs thereof or to pay to the department all costs of operation, maintenance, and repair of the special facility;
- (4) To:
 - (A) Insure, or cause to be insured, the special facility under builder's risk insurance (or similar insurance) in the amount of the cost of construction of the special facility to be financed from the proceeds of the special facility revenue bonds;
 - (B) Procure and maintain, or cause to be procured or maintained, to the extent commercially available, a comprehensive insurance policy providing protection and insuring the department and its officers, agents, servants, and employees (and so long as special facility revenue bonds are outstanding, the trustee) against all direct or contingent loss or liability for damages for personal injury or death or damage to property, including loss of use thereof, occurring on or in

any way related to the special facility or occasioned by reason of occupancy by and the operations of the other person upon, in, and around the special facility;

- (C) Provide all risk casualty insurance, including insurance against loss or damage by fire, lightning, flood, earthquake, typhoon, or hurricane, with standard extended coverage and standard vandalism and other malicious mischief endorsements; and
- (D) Provide insurance for workers' compensation, employer's liability, and aircraft liability (including passenger liability) for personal injury or death or damage to property (the other party may self-insure for workers' compensation if permitted by law);

provided that all policies with respect to loss or damage of property including fire or other casualty and extended coverage and builder's risk shall provide for payments of the losses to the department, the other person, or the trustee as their respective interests may appear; and provided further that the insurance may be procured and maintained as part of or in conjunction with other policies carried by the other person; and provided further that the insurance shall name the department, and so long as any special facility revenue bonds are outstanding, the trustee, as additional insured; and

- (5) To indemnify, save, and hold the department, the trustee and their respective agents, officers, members, and employees harmless from and against all claims and actions and all costs and expenses incidental to the investigation and defense thereof, by or on behalf of any person, firm, or corporation, based upon or arising out of the special facility or the other person's use and occupancy thereof, including, without limitation, from and against all claims and actions based upon and arising from any:
 - (A) Condition of the special facility;
 - (B) Breach or default on the part of the other person in the performance of any of the person's obligations under the special facility lease;
 - (C) Fault or act of negligence of the other person or the person's agents, contractors, servants, employees, or licensees; or
 - (D) Accident to or injury or death of any person or loss of or damage to any property occurring in or

about the special facility, including any claims or actions based upon or arising by reason of the negligence or any act of the other person.

Any moneys received by the department pursuant to paragraphs (2) and (3) shall be paid into the airport revenue fund and shall not be nor be deemed to be revenues of the special facility.

(b) The term and all renewals and extensions of the term of any special facility lease (including any amendments or supplements thereto) shall not extend beyond the lesser of the reasonable life of the special facility which is the subject of the special facility lease, as estimated by the department at the time of the entering into thereof, or thirty years.

(c) Any special facility lease entered into by the department shall be subject to chapter 171 and shall contain any other terms and conditions that the department deems advisable to effectuate the purposes of this part. [L 1971, c 160, pt of §1; am L 1998, c 284, §2]

" **§261-55 Special facility revenue bonds.** All special facility revenue bonds authorized to be issued shall be issued pursuant to part III of chapter 39, except as follows:

- (1) No revenue bonds shall be issued unless at the time of issuance the department shall have entered into a special facility lease with respect to the special facility for which the revenue bonds are to be issued;
- (2) The revenue bonds shall be issued in the name of the department, and not in the name of the State;
- (3) No further authorization of the legislature shall be required for the issuance of the special facility revenue bonds, but the approval of the governor shall be required for the issuance;
- (4) The revenue bonds shall be payable solely from and secured solely by the revenues derived by the department from the special facility for which they are issued;
- (5) The final maturity date of the revenue bonds shall not be later than either the estimated life of the special facility for which they are issued or the initial term of the special facility lease;
- (6) If deemed necessary or advisable by the department, or to permit the obligations of the other person to the special facility lease to be registered under the United States Securities Act of 1933, the department with the approval of the state director of finance may appoint a national or state bank within or without the State to serve as trustee for the holders of the

revenue bonds and may enter into a trust indenture or trust agreement with the trustee. The trustee may be authorized by the department to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued and to apply the revenues to the payment of the principal and interest on the revenue bonds. In the event that any trustee shall be appointed, any trust indenture or agreement entered into by the department with the trustee may contain the covenants and provisions authorized by part III of chapter 39 to be inserted in a resolution adopted or certificate issued, as though the words "resolution" or "certificate" as used in that part read "trust indenture or agreement". The covenants and provisions shall not be required to be included in the resolution or certificate authorizing the issuance of the revenue bonds if included in the trust agreement or indenture. Any resolution or certificate, trust indenture or trust agreement adopted, issued, or entered into by the department pursuant to this part may also contain any provisions required for the qualification thereof under the United States Trust Indenture Act of 1939. The department may pledge and assign to the trustee the special facility lease and the rights of the department including the revenues thereunder;

- (7) If the department with the approval of the state director of finance shall have appointed or shall appoint a trustee for the holders of the revenue bonds, then notwithstanding the provisions of the second sentence of section 39-68 the director of finance may elect not to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption, of the revenue bonds, or may elect to limit the functions the director of finance shall perform as the fiscal agent. The department with the approval of the director of finance may appoint the trustee to serve as the fiscal agent, and may authorize and empower the trustee to perform the functions with respect to payment, purchase, registration, transfer, exchange, and redemption, that the department may deem necessary, advisable, or expedient, including, without limitation, the holding of the revenue bonds and coupons which have been paid and the supervision and conduction of the destruction thereof in accordance with sections 40-10 and 40-11.

Nothing in this paragraph shall be a limitation upon or construed as a limitation upon the powers granted in the preceding paragraph to the department with the approval of the director of finance to appoint the trustee, or granted in sections 36-3 and 39-13 and the third sentence of section 39-68 to the director of finance to appoint the trustee or others, as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower the fiscal agents, paying agents, and registrars to perform the functions referred to in that paragraph and sections, it being the intent of this paragraph to confirm that the director of finance as aforesaid may elect not to serve as fiscal agent for the revenue bonds or may elect to limit the functions the director of finance shall perform as the fiscal agent, that the director of finance may deem necessary, advisable, or expedient;

- (8) The department may sell the revenue bonds either at public or private sale;
- (9) If no trustee shall be appointed to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued, the revenues shall be held in a separate account in the treasury of the State, separate and apart from the airport revenue fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture, or trust agreement authorizing or securing the revenue bonds;
- (10) If the resolution, certificate, trust indenture, or trust agreement shall provide that no revenue bonds issued thereunder shall be valid or obligatory for any purpose unless certified or authenticated by the trustee for the holders of the revenue bonds, signatures of the officers of the State upon the bonds required by section 39-56 may be facsimiles of their signatures;
- (11) Proceeds of the revenue bonds may be used and applied by the department to reimburse the other person to the special facility lease for all preliminary costs and expenses, including architectural and legal costs; and
- (12) If the special facility lease shall require the other person to operate, maintain, and repair the special facility which is the subject of the lease, at the other person's expense, the requirement shall constitute compliance by the department with section 39-61(a)(2), and none of the revenues derived by the

department from the special facility shall be required to be applied to the purposes of section 39-62(2). Sections 39-62(4), 39-62(5), and 39-62(6) shall not be applicable to the revenues derived from a special facility lease. [L 1971, c 160, pt of §1; am L 1974, c 101, §1; gen ch 1985; am L 1998, c 284, §3]

"[ABANDONED AIRCRAFT]

§261-71 Custody and disposal of abandoned aircraft. (a)

Any aircraft:

- (1) Which has been left unattended for a continuous period of more than thirty days, and
- (2) Which is located upon an airport, as defined in section [261-1], under the jurisdiction or control of the State,

may be deemed abandoned and taken into custody and disposed of by the director of transportation pursuant to this chapter.

(b) Upon taking custody of any such aircraft a written notice shall immediately be posted on the aircraft and a duplicate original thereof shall be sent by certified mail, with a return receipt, to the registered owner of the aircraft at the last address shown on the records of the Federal Aviation Administration or to such other address known to the department of transportation which is more current; to all lien holders who have filed a financing statement indexed in the name of the registered owner in the state bureau of conveyances or who are shown on the records of the Federal Aviation Administration; and to any other person known to have any interest in the aircraft whose address is known to the department of transportation. The notice shall contain a brief description of the aircraft, the location of custody, and the intended disposition of the aircraft if not repossessed within twenty days after the mailing of the notice. A notice need not be sent to any purported owner or any other person whose interest in the aircraft is not recorded with the Federal Aviation Administration or not known to the department of transportation.

(c) The department may assess and recover as against the owner of the aircraft, all airport use charges, landing fees, holding room use charges, towing, handling, aircraft storage charges, appraisal, advertising and other reasonable expenses incurred by the department in connection with the aircraft.

(d) If the aircraft is not repossessed within twenty days after the mailing of the notice, the aircraft shall be disposed of by public auction, through oral tenders, or by sealed bids, after public notice has been given; provided that the public auction shall not be held less than five days after public

notice is given. Where no bid is received, the aircraft may be sold by negotiation, disposed of as junk, or donated to any governmental agency.

(e) Any person having an interest in the aircraft may take possession of the aircraft prior to the date of public auction upon payment to the department of transportation of all airport use charges, landing fees, holding room use charges, towing, handling, aircraft storage charges, appraisal, advertising and other expenses chargeable to the aircraft or incurred by the department in connection with the aircraft. If the person taking possession of the aircraft is not the registered owner, that person shall, prior to taking possession of the aircraft, pay the foregoing fees, charges and expenses and post adequate security which shall not exceed the value of the aircraft. The security, if not forfeited, shall be returned two years after receipt.

(f) Public auction shall not be required when the appraised value of any aircraft, as determined by an independent appraiser who has had at least one year of experience in the sale or purchase of aircraft, is less than \$100. Upon that determination and after public notice has been given, the director of transportation may sell the aircraft by negotiation, dispose of it as junk, or donate the aircraft to any governmental agency.

(g) The transfer hereunder shall be evidenced by a bill of sale from the department of transportation, shall be considered a transfer by operation of law and shall be governed by provisions applicable thereto. [L 1981, c 25, pt of §1; am L 1998, c 2, §§77, 78]

" **[\$261-72] Disposition of proceeds of sale.** The department of transportation shall deposit into the airport revenue fund, that portion of the proceeds of the sale of an aircraft as shall represent the storage and other airport fees and charges due the department, the expenses of the auction, and any other expense incurred by the department in taking into custody and disposing of an aircraft. The balance, if any, shall be deposited into the general fund of the State. The owner may recover any such balance of the proceeds from the State only if the owner files a claim therefor with the department of budget and finance within five years after the execution of the bill of sale. A lien holder shall receive priority of payment from the balance of the proceeds to the extent of the lien holder's lien on the aircraft. If the proceeds of the sale are insufficient to cover the storage and other airport fees and charges, the expenses of the auction and other expenses of the department in taking into custody and disposing of the aircraft, the department of

transportation may, within five years, bring an action for the deficiency in a court of appropriate jurisdiction against the person who was the owner of the aircraft at the time custody was taken by the department. [L 1981, c 25, pt of §1; gen ch 1985]

" **§261-73 Custody and disposal of derelict aircraft.** (a)

An aircraft which has been left unattended for a continuous period of more than twenty-four hours is a derelict, if:

- (1) The aircraft is obstructing a taxiway, runway or ramp parking area, or is endangering life or property; or
- (2) The aircraft has been parked or otherwise left at a state airport or on public property contrary to law or rules having the force and effect of law, or the aircraft has been left on private property without authorization of the owner or occupant of the property and if:

- (A) The aircraft's certificate of registration or aviation document is no longer effective and the registered owner no longer resides at the address listed in the aircraft registration document records of the Federal Aviation Administration; or
- (B) The last registered owner disclaims ownership and the current owner's name or address cannot be determined; or
- (C) The aircraft identification numbers and other means of identification have been removed so as to nullify efforts to locate or identify the owner; or
- (D) The aircraft registration records of the Federal Aviation Administration contain no record that the aircraft has ever been registered and the owner's name or address cannot be determined.

(b) The director of transportation may cause a derelict aircraft to be immediately taken into custody. Upon taking custody of a derelict aircraft the director shall concurrently:

- (1) Give public notice of intended disposition;
- (2) When possible, post a notice of intended disposition on the aircraft; and
- (3) Serve a duplicate original of the notice of intended disposition by certified mail, return receipt requested:
 - (A) On the registered owner of the aircraft at the last address shown on records in the Federal Aviation Administration;
 - (B) On all lien holders who have filed a financing statement indexed in the name of the registered

owner in the bureau of conveyances or who are shown in the records of the Federal Aviation Administration; and

- (C) On any other person known to have an interest in the aircraft whose address is known to the department of transportation. If the aircraft is not repossessed within twenty days after the giving and mailing of the notice, whichever occurs later, the aircraft may be disposed of by negotiated sale, except that, when two or more purchasers indicate an interest in purchasing the aircraft, the aircraft will be sold at public auction to the highest bidder. If no purchaser expresses a desire to purchase the aircraft, the aircraft may be destroyed or disposed of by any other method authorized for abandoned aircraft. [L 1981, c 25, pt of §1; am L 1998, c 2, §79]

" **[\$261-74] Aircraft or property taken into legal custody; unauthorized control.** No person shall exercise control over an aircraft or other property that is under legal custody, seizure, or detention by the department of transportation. [L 1981, c 25, pt of §1]

" **[\$261-75] Disposal of aircraft by persons in aircraft repair business.** (a) When any person abandons an aircraft upon the premises of an aircraft repair business, the owner of the business or the authorized representative of the owner may sell or dispose of the aircraft in accordance with this section.

(b) An aircraft shall be deemed to be abandoned upon satisfaction of all the following conditions:

- (1) The service requested or required by a person whose aircraft is towed or brought to an aircraft repair business, such as towing and rendering estimates of the cost of repairs, has been performed; and
- (2) No authorization is given to perform any further service respecting the aircraft but the aircraft is left on the repair business premises; and
- (3) The owner of the repair business or the owner's authorized representative has given notice by registered or certified mail:
 - (A) To the registered owner of the aircraft at the address on record at the aircraft repair business and the address on record in the Federal Aviation Administration, and
 - (B) To any person with a recorded interest in the aircraft, stating that if the aircraft is not

repossessed within thirty days after the mailing of the notice, it will be sold or disposed of. The notice also shall contain a description of the aircraft and its location. The notice need not be sent to any purported owner or any person with an unrecorded interest in the aircraft whose name or address is not known and cannot be determined; and

(4) The aircraft is not repossessed within the thirty-day period specified in paragraph (3).

(c) When an aircraft is abandoned, the owner of the aircraft repair business, or the authorized representative of the owner of the repair business, after one public advertisement in a newspaper of general circulation in the State, may negotiate the sale of the aircraft or dispose of it; provided that the aircraft shall not be sold or disposed of less than five days after the publication of the advertisement.

(d) The authorized seller of the aircraft shall be entitled to the proceeds of the sale to the extent that compensation is due the seller for services rendered in respect of the aircraft, including reasonable and customary charges for towing, handling, storage, and the cost of the notices and advertising required by this section. A lien holder shall receive priority of payment from the balance to the extent of the lien holder's lien. Any remaining balance shall be forwarded to the registered owner of the aircraft, if the owner can be found. If the owner cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the registered owner of the aircraft, if a proper claim is filed therefor within one year from the execution of the sale agreement. If no claim is made within the year allowed, the money shall become a state realization.

(e) The transfer of title and interest by sale under this section is a transfer by operation of law and a bill of sale executed by the authorized seller shall be sufficient to authorize the transfer of title or interest. [L 1981, c 25, pt of §1; gen ch 1985]

" [TRESPASS TO AIRCRAFT]

[§261-91] Trespass to aircraft; penalty. Whoever without right, boards or remains in or upon any aircraft of another within a state airport shall be fined not more than \$250, or imprisoned not more than three months, or both. [L 1981, c 25, pt of §1]

" **[\$261-92] Questioning and detaining suspected persons aboard an aircraft.** A police officer may detain any person found upon an aircraft, under circumstances as reasonably justify a suspicion that the person boarded without permission, for the purpose of demanding, and may demand the name and address of the person and the nature of the person's business upon the aircraft. If the police officer has reason to believe that the person has no right to be upon the aircraft, the police officer may arrest the person without a warrant on the charge of violating section 261-91. [L 1981, c 25, pt of §1]