

CHAPTER 268
FERRIES

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Note

Interisland and intra-island ferry system feasibility study; report to 2018 legislature. L 2016, c 196.

Large capacity ferry vessel requirements. L Sp 2007 2d, c 2.

" **§268-1 Ferry system and facilities authorized.** It being hereby declared that the establishment of a ferry system to provide the people of this State with an economic means of transportation is a public purpose, the department of transportation, hereinafter referred to as the department, may acquire by lease, charter, contract, purchase, condemnation, or construction, and partly by any or all of such means, and thereafter operate, improve, and extend, as a public undertaking and enterprise, a system of ferries between the islands of the State and connecting with the public streets and highways in the State, the system of ferries to include such boats, vessels, wharves, docks, approaches, landings, franchises, licenses, and appurtenances, as shall be determined by the department to be necessary or desirable for the efficient operation of a ferry system to best serve the public. In general the department shall have all the powers necessary or convenient to carry out effectively the purpose and provisions of this chapter. The department may acquire by purchase, condemnation, or construction and include in such ferry system such approaches and connecting roadways as may be deemed by the department advantageous in channeling traffic to points served by the ferry system. The department may enter into any contracts, agreements, or leases with any person, firm, or corporation whether public or private and thereby provide, on such terms and conditions as it shall determine, for the operation of any ferry or ferries or system thereof, whether acquired by the department or not. The department may further exercise the power of eminent domain for the acquisition of either real or personal property, necessary for the ferry system. [L 1963, c 186, §1; Supp, §114-1; HRS §268-1]

Cross References

Eminent domain, see chapter 101.

" **§268-1.5 Private ferry or ferry system; authority to provide.** Notwithstanding any other provisions of this chapter, the department, in lieu of establishing the Hawaii State Ferries, an inter-island or intra-island ferry or ferry system operated and maintained by the State under the provisions of the chapter, may enter into a contract, lease, or other agreement

with any person to provide for a privately operated ferry or ferry system; provided that no contract, lease, or other agreement shall be made except under contract let after public advertisement for sealed tenders, subject to the provisions under chapter 103D. [L 1988, c 232, §2; am L Sp 1993, c 8, §54]

" **§268-2 "Hawaii State Ferries" name authorized.** The department of transportation may operate its ferry system under the name "Hawaii State Ferries". [L 1963, c 186, §2; Supp, §114-2; HRS §268-2]

" **[\$268-2.5 Intra-island water ferry transportation system; authority to implement.]** The department of transportation is authorized to implement an intra-island water ferry transportation system subject to chapter 103D. The intra-island water ferry transportation system shall be premised upon the transportation of commuters during peak traffic periods and may be used for other revenue-generating purposes during non-peak traffic periods. The system may include landings at various locations along the southern coast of Oahu and shall be integrated with ground transportation.

The department of transportation and the department of land and natural resources are authorized to:

- (1) Waive or assess nominal fees for the use of public infrastructures and terminals by the operator of the intra-island water ferry transportation system; and
- (2) Lease public lands at a nominal cost to the operator of the intra-island water ferry transportation system.

In return for concessions as determined jointly by the department of transportation and the department of land and natural resources, the operator of the intra-island water ferry transportation system shall provide the ferry service at no cost or nominal cost to the State for the duration of the concessions. Operating expenses may be further supplemented by other revenue-generating activities during non-peak traffic periods.

The department of transportation shall aggressively explore the possibility of obtaining federal funds to implement the intra-island water ferry transportation system. [L 1998, c 221, §2]

Note

Demonstration project. L 1998, c 221, §3.

" **[\$268-2.6 Ferry project special fund.]** There is established in the state treasury the ferry project special

fund, into which shall be deposited revenues collected by the operators of the intra-island water ferry transportation system. Moneys in the ferry project special fund shall be used to offset costs incurred by the intra-island water ferry transportation system or demonstration project, or both; provided that no expenditure shall be made from, and no obligation shall be incurred against the fund in excess of its deposits. Moneys in the fund shall be expended by the department of transportation. [L 1998, c 221, §4]

Note

Demonstration project. L 1998, c 221, §3.

" **§268-3 Survey.** The department of transportation may make any examination, investigation, survey, or reconnaissance it deems necessary for obtaining information relative to the acquisition, construction, or operation of the ferry or ferry facilities. [L 1963, c 186, §3; Supp, §114-3; HRS §268-3]

" **§268-4 Appropriation; personnel.** There is appropriated from the general revenues of the State the sum of \$150,000 or so much thereof as may be necessary, to defray the cost of any examination, investigation, survey, or reconnaissance and all other expenses necessary for the issuance of any bonds and the implementation of the ferry system; provided that upon the sale of the revenue bonds authorized herein, that portion of the \$150,000 which is expended for planning, designing, or preparation of plans and specifications for the construction or improvement of the ferry vessel or terminal facilities needed for the operation of the ferry system shall be repaid by the department of transportation to the State.

The department may hire personnel to perform the services noted above and to implement the ferry system. The personnel, however, shall be hired by contract and be exempt from chapter 76 and the appropriate collective bargaining agreement, executive order, executive directive, or rule. [L 1963, c 186, §4; am L 1965, c 204, §1(a); Supp, §114-4; HRS §268-4; am L 2000, c 253, §150; am L 2002, c 148, §23]

" **§268-5 Bonds; issue authorized.** For the purpose of paying any and all costs in connection with the acquisition by lease, charter, contract, purchase, condemnation, or construction of all or any part of the ferry system, approaches, and roadways incidental thereto, and for rehabilitating, rebuilding, enlarging, extending, battering, and improving all or any part of the system and of the facilities used or useful in connection

therewith and for providing initial working capital, the department of transportation is authorized to issue by certificate of its director revenue bonds of the State in an amount not exceeding \$14,000,000 or so much thereof as may be necessary; provided that the department may issue the revenue bonds only after approval by the governor. Revenue bonds issued pursuant to the provisions of the chapter shall be payable solely from and secured by a first charge and a prior and paramount lien upon all or such part of the gross revenues derived from the operation of the ferry system as shall be pledged thereto in and by the certificate of the director of transportation providing for the issuance of the bonds, and the bonds shall not constitute an indebtedness of the State. Except as otherwise provided herein, the bonds shall be issued in accordance with, be subject to and be entitled to the security and benefits of chapter 39, part III. The bonds shall be sold by the director at public sale as provided in section 39-54, or, with the approval of the governor and of the director of finance, may be sold by the director at private sale, and in either event may be sold at a discount of not to exceed two per cent of the par value thereof. [L 1963, c 186, pt of §5; am L 1965, c 204, pt of §1(b); Supp, pt of §114-5; HRS §268-5]

Note

Reference to §39-54 is to the section prior to 1988. L 1988, c 28 enacted a new §39-54 with no reference to "public sale". For related provisions, see §39-55.

" **§268-6 Bonds, certificates of issuance; terms and conditions.** (a) Any certificate or certificates providing for the issuance of revenue bonds pursuant to this chapter shall provide that the revenue bonds shall be redeemable before the maturity thereof at the option of the department of transportation at any time after five years from the date of such bonds on such terms and conditions as the certificate or certificates providing for the issuance of the bonds shall prescribe, including the payment of premiums upon the redemption thereof, and may contain covenants on behalf of the State to protect and safeguard the security and rights of the holders thereof authorized by chapter 39, part III, and, in addition thereto, covenants as to, among other things:

- (1) Subject to section 268-8, the establishment and maintenance of adequate rates, rentals, and charges for the services and facilities sold, furnished, or supplied through the ferry system; and

(2) Limitations upon the right to dispose of the ferry system or any part thereof without providing for the payment of revenue bonds issued pursuant to this chapter.

(b) All gross revenues derived from the operation of the ferry system and any additions or extensions thereof shall be deposited to the credit of the state general fund. [L 1963, c 186, pt of §5; am L 1965, c 204, pt of §1(b); Supp, pt of §114-5; HRS §268-6; am L 1993, c 280, §55]

" **§268-7 Operation of ferry system.** The department of transportation may operate such ferry system, including all operations, whether intrastate or international, upon any route or routes, as a revenue producing undertaking, and the State covenants with the holders from time to time of bonds issued pursuant to this chapter that so long as any of the bonds are outstanding and unpaid the State will continue to maintain and operate the ferry system and to impose and collect rates, rentals, and charges for the services, facilities, and commodities sold, furnished, or supplied through the facilities of the ferry system which will provide gross revenues sufficient to pay the principal of and interest on all bonds issued pursuant to this chapter, including reserves therefor, and to maintain all funds or reserves created pursuant to the certificate authorizing such bonds for the rehabilitation, renewal, and replacement of the facilities of the ferry system so as to maintain the same in good operating condition. The department shall have full charge of the construction, rehabilitation, rebuilding, enlarging, improving, and maintenance of the ferry system, including approaches and roadways incidental thereto that may be authorized by the department, the granting of concessions, the collection of tolls, and other charges for the services and facilities of the undertaking; provided that the department shall comply with the provisions of chapter 102 relating to contracts for concessions on public property. The gross revenues derived from the operation of the ferry system shall be appropriated, applied, or expended for the purposes and in the order of priority set forth in section [39-62]; provided that if the certificate authorizing the issuance of the bonds shall so provide, the revenues shall be appropriated, applied, or expended for the rehabilitation, renewal and replacement of the facilities required to maintain the ferry system in good operating condition, including such reserve or reserves therefor as shall be provided in the certificate, immediately after being appropriated, applied, or expended to the payment of the bonds and interest thereon, including reserves therefor, and before being appropriated,

applied, or expended to the other purposes set forth in the section. [L 1963, c 186, §6; am L 1965, c 204, §1(c); Supp, §114-6; HRS §268-7]

" **§268-8 Fixing of charges, rates, and disbursements of revenues.** So long as any of the bonds authorized pursuant to this chapter are outstanding and unpaid, the department of transportation shall establish, maintain, and collect charges, rentals, and rates for the services, facilities, and commodities sold, furnished, or supplied through the facilities of the ferry system as shall be reasonable and consistent with the purpose of providing economical inter-island transportation, notwithstanding section [39-61] or any other law to the contrary; provided that the rates, rentals, and charges shall at all times be sufficient to provide revenues in amounts necessary to pay the principal of and interest on all bonds issued pursuant to this chapter, including reserves therefor, and to maintain all funds or reserves created by the certificate authorizing the issuance of the bonds for the rehabilitation, renewal, and replacement of facilities required to maintain the ferry system in good operating condition. [L 1963, c 186, §7; am L 1965, c 204, §1(d); Supp, §114-7; HRS §268-8]

" **§268-9 Seamen may sue for injuries; venue.** The State consents to suits against the department of transportation by seamen for injuries occurring upon vessels under the authority of the Hawaii state ferries system in accordance with section 688, Title 46, of the United States Code. The venue of the actions may be in the first circuit court or the circuit wherein the injury occurred. [L 1963, c 186, §8; Supp, §114-8; HRS §268-9]

" **§268-10 Authority as a common carrier; rights and liabilities.** The department of transportation shall have all the obligations, duties, and rights of a common carrier of persons and property in its operation of ferries, terminals, or other facilities used in its ferry operations, including the right to participate in joint rates and through routes, agreements, and divisions of through and joint rates with railroads and other common carriers and the right to make any filings with the Interstate Commerce Commission, the United States Maritime Commission, or any other state or federal regulatory or governmental body and to comply with the lawful rules and regulations or requirements of any such body, and shall be subject to laws relating to carrier's liability for loss or damage to property transported, and for personal injury

or death of persons transported. [L 1963, c 186, §9; Supp, §114-9; HRS §268-10]

" **§268-11 Liability for damages as to persons or property.**

In case of property loss or damage, personal injuries or death resulting from the operation of any ferry or terminal by the department of transportation, any person or the personal representative of any person shall, subject to and to the extent hereinafter provided, have a right of action against the department for the damage, loss, injury, or death. [L 1963, c 186, §10; Supp, §114-10; HRS §268-11]

" **§268-12 Liability to persons other than shippers or passengers; limitation.** The right of action extended by this chapter shall be applicable to loss or damage of property or personal injury or death, resulting from the operation of ferries or terminals by the department of transportation to persons other than shippers or passengers, but any recovery of damages in such cases shall not exceed an amount equal to the limitations of the insurance carried by the department to insure it against loss for such liability. [L 1963, c 186, §11; Supp, §114-11; HRS §268-12]

" **§268-13 Claim for damages; filing and contents; time limitations.** As a condition to a recovery thereon, a verified claim against the department of transportation growing out of damages, loss, injuries, or death must first be presented to the department and filed with its director within thirty days after the time when the claim accrued. If the claimant shall be incapacitated from verifying and filing the claimant's claim within the thirty days, then the claim may be verified and presented on behalf of the claimant by the claimant's relative, attorney, or agent. If the claimant is a minor or incompetent person, the claim may be verified and filed by the claimant's guardian or next friend. Each claim must accurately locate and describe the event or defect that caused the damage, loss, injury, or death, reasonably describe the damage, loss, or injury, and state the time when the same occurred, give the claimant's residence for six months last past, and contain the items of damages claimed. No action shall be maintained against the department upon the claim until the same has been presented to, and filed with, the department and sixty days have elapsed after the presentation and filing, nor more than two years after the claim accrued. [L 1963, c 186, §12; Supp, §114-12; HRS §268-13; gen ch 1985]

" **§268-14 Payment of claims.** The department of transportation may upon such terms and conditions as it may impose and under such rules and regulations as it may adopt, pay claims arising under its operation of ferries or terminals or compromise or settle the claims. No claim shall be paid by the department or any settlement or compromise thereof be made except from its operating revenues derived from its operation of ferries or terminals or from the proceeds of insurance recoveries. [L 1963, c 186, §13; Supp, §114-13; HRS §268-14]

Cross References

Rulemaking procedure, see chapter 91.

" **§268-15 Venue of actions; enforcement of judgment.** Actions for the recovery of damages under sections 268-11 to 268-15 may be brought in the first circuit court or in the circuit in which the aggrieved person resides. No execution upon a judgment or attachment shall be levied against the property of the department of transportation, nor does the State consent to any maritime lien against vessels of the department, but the department may be required by order of court to pay any judgment. [L 1963, c 186, §14; Supp, §114-14; HRS §268-15]

" **§268-16 Report.** The director of transportation shall prepare a report in writing of the nature and extent of the director's activities under this chapter whenever the director deems it necessary or appropriate. The report shall be delivered to each house of the legislature. [L 1963, c 186, §15; Supp, §114-15; HRS §268-16; am L 1979, c 55, §1; gen ch 1985]