

ACT 160

S. B. NO. 210

A Bill for an Act Relating to Powers of the Department of Transportation.

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

SECTION 1. Chapter 261, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . SPECIAL FACILITY PROJECTS

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

- (1) ‘Special Facility’ means one or more buildings, structures or facilities and the land thereof for the servicing of aircraft, for aeronautics, for airports or for the comfort, accommodation and convenience of air travelers and airline employees which is the subject of a special facility lease.
- (2) ‘Special Facility Lease’ includes a contract, lease or other agreement, or any combination thereof, the subject matter of which is the same special facility.
- (3) ‘Remodeling’ includes reconstruction, renovation, rehabilitation, improvement, betterment or extension of a special facility.

Sec. 261- Powers. In addition and supplemental to the powers granted to the department by law, the department may:

- (1) With the approval of the governor, and without public bidding, 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 such other person to a special facility lease.
- (2) With the approval of the governor, issue special facility revenue bonds in such principal amounts as 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 \$15,000,000.
- (3) Perform and carry out the terms and provisions of any special facility lease.
- (4) 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.
- (5) Construct any special facility on land owned by the State or on land or rights or interests in land acquired for that purpose.
- (6) 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 such other person. Neither such undertaking by such other person nor the acceptance by the department of a contract theretofore entered into by such other person therefor, shall be subject to the provisions of section 103-22.

Sec. 261- 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, com-

modities, 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 39-59; 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.

Sec. 261- 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 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 such time or times and in such 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 such 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 ground rental, equal to the fair market rental of the land, if the land on which the special facility was not acquired from the proceeds of the special facility revenue bonds or to pay to the department 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 bond.
- (3) To either operate, maintain and repair such special facility and pay the costs thereof or to pay to the department all costs of operation, maintenance and repair of the special facility.

Any moneys received by the department pursuant to subsections (a) (2) and (a) (3) of this section 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 such 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 such other terms and conditions as the department deems advisable to effectuate the purposes of this part.

Sec. 261- Special facility revenue bonds. All special facility revenue

bonds authorized to be issued shall be issued pursuant to the provisions of sections 39-51 to 39-70, except as follows:

- (1) No such 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 such revenue bonds are to be issued.
- (2) Such 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 such issuance.
- (4) Such 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 such 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 U.S. 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 such 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 such revenues to the payment of the principal and interest on such revenue bonds. In the event that any such 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 sections 39-51 to 39-70 to be inserted in a resolution adopted or certificate issued, as though the words 'resolution' or 'certificate' as used in those sections read 'trust indenture or agreement'. Such 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 U.S. 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) The department may sell such revenue bonds either at public or private sale.
- (8) If no trustee shall be appointed to collect, hold and administer the revenues derived from the special facility for which such revenue bonds are issued, such revenues shall be held in a separate account in the treasury of the State, separate and apart from the airport

ACT 160

revenue fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture or trust agreement authorizing or securing such revenue bonds.

- (9) If the resolution, certificate, trust indenture or 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 such revenue bonds, signatures of the officers of the State upon such bonds required by section 39-64 may be facsimilies of their signatures.
- (10) Proceeds of such 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.
- (11) If the special facility lease shall require the other person to operate, maintain and repair the special facility which is the subject of such lease, at his expense, such requirement shall constitute compliance by the department with section 39-59 (2) and none of the revenues derived by the department from such special facility shall be required to be applied to the purposes of section 39-60 (2). Sections 39-60 (4), 39-60 (5) and 39-60 (6) shall not be applicable to the revenues derived from a special facility lease.”

SECTION 2. Effective Date. This Act shall take effect upon its approval.

(Approved May 30, 1971.)