

A Bill for an Act Relating to Airports.

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

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

“§261- 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 said 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 advertisement has been made once in a newspaper of general circulation in the State; provided that the public auction shall not be held less than five days after the publication of the advertisement. 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 advertisement has been made once in a newspaper of general circulation in the State, 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."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1987.)

Note

1. Edited pursuant to HRS §23G-16.5.