

175.470 Leases between authority and department authorized -- Contents.

The authority and the department are authorized and empowered to enter into a lease or leases with respect to any turnpike project or projects pursuant to any agreement or agreements made under the provisions of KRS 175.460. Any lease may contain, in substance, any of the provisions set forth in this section and such other provisions not inconsistent herewith as the authority and the department may deem appropriate and desirable:

- (1) That the lease is for the remainder of the biennial period in which it is dated and executed, and is renewable at the option of the department for the succeeding biennial period, one (1) at a time, until the final maturity date of the bond issue to which the lease is related;
- (2) That as to the cost of maintaining, repairing and operating the project, and not otherwise, the department is contractually bound not only for the remainder of the biennial period in which the lease is dated and executed, but for the entire period of years until the final maturity of such bonds;
- (3) That with respect to the biennial period in which the lease is dated and executed, the department shall otherwise be firmly bound only (a) to contribute to the authority such portions, if any, of the cost of the project as the agreement prescribes shall be paid by the department, and (b) to pay to the authority the rental prescribed for such biennium;
- (4) That if the department shall fully perform all such obligations during such initial term of the lease, it shall have an exclusive option to renew the lease at the time and in the manner prescribed for the ensuing biennium, effective on the first day thereof; that the department shall not be or become in any way obligated to pay the rental stipulated for such biennium unless the lease be so renewed; and that the department shall, upon any such renewal, be firmly bound to pay to the authority the rental stipulated for such biennium as a general obligation of the department to be paid not only from the revenues of the project but also from any other available funds of the department not required by law or by previous binding contract to be devoted to some other purpose;
- (5) In like manner and subject to the same conditions and provisions as are set forth in subsection (4) above, if the department shall in such first ensuing biennium fully perform all its obligations and pay to the authority the rental stipulated for such biennium, the department shall have another exclusive option to renew such lease for another biennium; and so on for successive biennial terms until the final biennium for which the lease may be renewed;
- (6) That each such option of the department to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by so notifying the authority in writing signed by the commissioner of highways and delivered in the office of the authority to any officer thereof; provided, however, that such option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a

written notice of the department's election not to renew shall have been delivered in the office of the authority, to an officer thereof, before the close of business on the last working day in April immediately preceding the beginning of such succeeding biennium;

- (7) That so long as the lease is renewed from time to time and the department fully performs all its obligations as lessee, including payment of the rental stipulated in the lease, (a) the revenues of the project shall be collected, segregated, distributed, deposited, secured, disbursed and accounted for in strict conformity with the proceedings and trust indenture of the authority, and the aggregate of such revenues properly accounted for and deposited pursuant to said proceedings and trust indenture shall, if and to the extent provided in the lease, be a credit against the department's rental or other obligations for the then current biennial term under the lease, and (b) any motor fuel taxes and surtaxes collected by the Commonwealth on gasoline and other motor fuels consumed on the project and set aside pursuant to an agreement shall be applied as provided in said proceedings and trust indenture and shall, if and to the extent provided in the lease, be a credit against the department's rental or other obligations for the then current biennial term under the lease; and if such revenues and motor fuel taxes so provided in the lease to be a credit against the rental or other obligations of the department under the lease shall at any time appear to be insufficient to discharge such obligations in full when due and payable, the department shall estimate the rate of deficiency on a semiannual basis conforming to the interest payment dates of the bonds of the authority to which the lease is related and shall pay the amount of such estimated deficiency to the authority in equal monthly payments from any other available funds of the department not required by law or previous binding contract to be devoted to other purposes, subject to adjustment from estimated deficiencies to actual deficiencies at least thirty (30) days before each such semiannual interest payment date; provided, however, that during the department's continuance in good standing in this respect the department shall have the right to establish, increase, decrease, suspend, or abolish the exaction of tolls, rates and charges for vehicular travel upon the project, but during any period when the department may elect to suspend or abolish the exaction of such tolls, rates and charges, it shall nevertheless continue to maintain in good operating condition, on a stand-by basis, all tollhouses, tollgates, toll-registering and toll-collecting equipment, signs, lights, fences, and other installations and facilities incident to, or used or useful in connection with, the exaction and collection of tolls, rates, and charges, in order that the same may be resumed at any time, without delay;
- (8) That in the event the lease is not renewed in accordance with its terms, or in the event it is renewed and the department shall fail to perform in full its obligations thereunder, then (a) the department shall immediately be liable for the balance of the rental stipulated for the then current biennial term for which the lease had previously been renewed, without requirement of notice or other action on the part of the authority, and shall forthwith pay such balance to the authority upon demand, (b) the department shall forfeit its then current option to renew the lease for the ensuing biennial term and its options for all future terms, (c) the right to establish,

increase, decrease, suspend, abolish the exaction of, or resume tolls, rates, and charges for vehicular travel on the project shall wholly pass from the department to the authority, and (d) all motor fuel taxes collected by the Commonwealth on gasoline and other motor fuels consumed on the project, except the two-sevenths (2/7) of said motor fuel taxes provided by KRS 138.220 to be set aside for the construction, reconstruction, and maintenance of rural and secondary roads, shall thereafter be set aside and paid over to the authority as revenues of the project for deposit in the sinking fund or funds pledged to the payment of the bonds of the authority; and

- (9) In the event of the department's forfeiture of rights as provided in subsection (8) of this section, the same may not be reassumed, nor the department restored to good standing with options to renew the lease from time to time, except in such manner as shall not be inconsistent with the rights of the holders of outstanding bonds.

Effective: March 25, 1960

History: Created 1960 Ky. Acts ch. 173, sec. 7, effective March 25, 1960.