

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 278

An Act to amend and reenact § 33.2-226 of the Code of Virginia, relating to authority of the Commissioner of Highways to lease or convey airspace.

[S 1148]

Approved March 3, 2017

Be it enacted by the General Assembly of Virginia:

1. That § 33.2-226 of the Code of Virginia is amended and reenacted as follows:

§ 33.2-226. Authority to lease or convey airspace.

The Commissioner of Highways may lease or sell and convey the airspace superjacent or subjacent to any highway in the Commonwealth that is within his jurisdiction and in which the Commonwealth owns fee simple title after satisfying itself that use of the airspace will not impair the full use and safety of the highway or otherwise interfere with the free flow of traffic thereon and it cannot be reasonably foreseen as needed in the future for highway and other transit uses and purposes. The Commissioner of Highways may provide in such leases and conveyances of airspace for columns of support, in fee or otherwise, ingress, egress, and utilities.

No lease or conveyance shall be entered into by the Commissioner of Highways ~~until after the time unless~~ the locality, by action of its governing body by majority recorded vote, approves the projected use ~~and has zoned~~ of the airspace in question ~~or has otherwise and has~~ taken such steps as it deems proper to regulate the type and use of the improvements to be erected in such airspace *by appropriate zoning or other method of land use control*.

All leases and conveyances shall contain those terms deemed necessary by the Commissioner of Highways to protect the interests of the Commonwealth and the public ~~and shall not be entered into until after public advertising for bids for such airspace~~. The Commissioner of Highways shall advertise for bids at least 14 days prior to the execution of a lease or a conveyance. ~~The advertisement shall state the place where bidders may examine a map of the airspace, the general terms of the lease or conveyance and the time and place when bids will be opened by the Commissioner of Highways. The highest bid from a responsible bidder, in the sole discretion of the Commissioner of Highways, shall be accepted; however, the Commissioner of Highways may reject all bids and advertise the property again~~ *may utilize any competitive procurement process authorized by law, including (i) competitive sealed bidding, (ii) competitive negotiation, (iii) best value procurements as defined in § 2.2-4301, and (iv) public-private partnerships pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.), as determined by the Commissioner of Highways, in his sole discretion, to be appropriate and the method most likely to achieve the identified goals of the proposed lease or sale and conveyance of airspace. The Commissioner of Highways may reject any bid or offer that he believes is not in the best interest of the Commonwealth.*

Compensation paid for such leases and conveyances shall be credited to the Transportation Trust Fund established pursuant to § 33.2-1524.