

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

[S 1148]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 33.2-226 of the Code of Virginia is amended and reenacted as follows:**8 **§ 33.2-226. Authority to lease or convey airspace.**

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

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

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

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

ENROLLED

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