

**161.433 USE OF HIGHWAY AIRSPACE AND SUBSURFACE.**

Subdivision 1. **Lease or permit, conditions and restrictions.** The commissioner of transportation may lease or otherwise permit the use of the airspace above and subsurface area below the surface of the right-of-way of any trunk highway, including the surface of the right-of-way above and below the airspace or subsurface areas, where the land is owned in fee by the state for trunk highway purposes when the use will not impair or interfere with the use and safety of the highway. The lease, permit, or other agreement may contain such restrictive clauses as the commissioner deems necessary in the interest of safety and convenience of public travel and other highway purposes. No lease, permit, or other agreement shall be for a period in excess of 99 years. Vehicular access to such airspace, subsurface, or surface areas shall not be allowed directly from the highway where such access would violate the provisions of United States Code, title 23, or would interfere in any way with the free flow of traffic on the highway. Any lease, permit, or other agreement shall have the approval of the appropriate federal agency when required.

Subd. 2. **Consideration for use.** The consideration paid for the use of airspace or subsurface areas shall be determined by the commissioner, but in no event shall it be less than a fair rental rate, and shall include costs for the erection and maintenance of any facilities or other costs occasioned by that use. All moneys received shall be paid into the trunk highway fund. This subdivision does not apply to real estate leased for the purpose of providing commercial and public service advertising pursuant to agreements as provided in sections 160.272 to 160.276.

Subd. 3. **Application to certain provisions.** Laws 1967, chapter 214 shall not apply to or affect the rights and privileges referred to in sections 161.45 and 222.37.

**History:** 1967 c 214 s 1,2,5; 1976 c 166 s 7; 1980 c 494 s 7; 1980 c 533 s 9; 2004 c 295 art 2 s 12,15; 2005 c 69 art 3 s 17