

## CHAPTER 165

### LEASING OF AIR RIGHTS

#### §3551. Utilization of air rights

**1. Lease authorized; proceeds.** Except as provided in paragraph A, any municipality may lease at one time or from time to time for a term or terms not to exceed 99 years, upon any terms and conditions that the municipal officers consider advisable, air rights over public streets and ways, parking facilities and other public buildings, land and water, in which the public has a right of travel or in which the municipality holds less than a fee interest. These leases may be made for any nonmunicipal purpose which, in the opinion of the municipal officers, will not impair the construction, full use, safety, maintenance or repair of those streets and ways, facilities, buildings, land and water. The proceeds from any lease granted under this chapter shall be paid into the municipal treasury.

A. No lease of air rights may be granted under this chapter with regard to any dedicated park land, including rights for support, access, utilities, light and air. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Any lease granted under this chapter for air rights over state and state aid highways must be approved by the Department of Transportation. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**2. Assignment, pledge or mortgage; reversionary rights.** Any lease granted under this chapter may, with the consent of the municipal officers, be assigned, pledged or mortgaged and the lien of that pledge or mortgage may be foreclosed by appropriate action. Any lease granted under this chapter for air rights over public streets and ways in which the municipalities own an easement, but not a fee interest, does not affect the reversionary rights, if any, of the holder of the fee in the public street or way.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**3. Fee interests unaffected.** This chapter does not reduce the right of a municipality holding a fee interest in streets, ways, facilities, buildings, land or water from conveying air rights in fee or by lease. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

#### SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD).

#### §3552. Applicability of building and other laws

The construction or occupancy of any structure erected or affixed under any lease under this chapter is subject to the building, fire, garage, health and zoning ordinances, bylaws and regulations applicable in the municipality. Any structure erected over or affixed to any public street or way under this chapter is valid and declared a legal structure. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

## SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD).

**§3553. Taxation**

**1. Structures taxed.** Any structure erected or affixed under any lease granted under this chapter shall be taxed to the lessee or the assigns in the same manner and to the same extent as if the lessee or the assigns were the owners of the land in fee, except that no part of the value of the land may be included in the assessment. The municipality may exercise all remedies provided generally for the collection of taxes. Any such leasehold estate may be sold or taken by the municipality for the nonpayment of any taxes assessed under this section in the manner provided by law for the sale or taking of real estate for nonpayment of local taxes.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**2. Payment instead of taxes.** The municipality shall include in any lease granted under this chapter a provision in which the lessee agrees, if subsection 1 is determined by a court of competent jurisdiction to be inapplicable, to pay annually to the municipality a sum of money instead of the taxes which would otherwise be assessed on the lease in that year.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

## SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD).

**§3554. Parties in interest**

Each lease made under this chapter must require that the lessee file with the municipality a statement under oath containing the names and addresses of the officers and directors, in the case of a corporation, and, in the case of a partnership or other voluntary association, the names and addresses of all persons having a financial interest in the lease. A copy of all leases granted by the municipality shall be kept on file and shall be open to public inspection. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

## SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD).

**§3555. Limitations**

Municipalities shall not execute any leases which would: [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**1. Impair use of highway.** Impair the use and safety of any highway;  
[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**2. Used solely for advertising.** Be solely for outdoor advertising structures; or  
[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**3. Violate Federal Aviation Agency regulations.** Violate any regulations promulgated by the Administrator of the Federal Aviation Agency.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

#### SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD).

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