

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

2

HOUSE BILL 313
Second Edition Engrossed 4/11/13

Short Title: DOT Sales of Unused Property. (Public)

Sponsors: Representatives W. Brawley, Moffitt, Schaffer, and Ramsey (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Transportation, if favorable, Finance.

March 18, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO FACILITATE THE TRANSFER OF UNUSED DEPARTMENT OF
3 TRANSPORTATION LAND TO THE PRIVATE SECTOR BY STREAMLINING THE
4 PROCESS OF SELLING THAT LAND.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 136 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 2F.

9 "Identification and Sale of Unused Property.

10 "**§ 136-44.70. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) Contingent bid. – A bid for the purchase of a Class A property that is made
13 contingent on the elapsing of a due diligence period or on particular action
14 being taken with respect to a rezoning application. Subject to the provisions
15 of G.S. 136-44.73(c), the bidder shall determine the duration of the
16 contingency period.
- 17 (2) Department. – The Department of Transportation.
- 18 (3) Due diligence period. – A period of time during which the potential
19 purchaser of a Class A property may conduct inspections, appraisals, and
20 related activities whose purpose is to determine the desirability of
21 purchasing the property at issue.
- 22 (4) Earnest money. – Funds required to accompany a contingent bid in
23 accordance with G.S. 136-44.73(c).
- 24 (5) Unused property. – Real property owned by or allocated to the Department
25 that is not needed for current or future transportation purposes, including
26 residue properties, uneconomic remnant properties, and property identified
27 pursuant to G.S. 136-44.77(1).
- 28 (6) Upset bid. – A bid to purchase unused property that is at least five percent
29 (5%) higher than the highest bid for the property thus far received.

30 "**§ 136-44.71. Classification of unused property.**

31 The Department shall continuously identify unused property and shall classify each lot,
32 block, or tract of unused property as one of the following types:

- 33 (1) Class A. – A property (i) whose size and road access are sufficient to allow
34 commercial or residential development of one or more stand-alone projects
35 without requiring the acquisition of additional real property and (ii) whose



* H 3 1 3 - V - 2 *

1 size and shape are sufficient to allow compliance with applicable or
2 proposed zoning and development standards for parking, setbacks, side and
3 front yard requirements, and access.

4 (2) Class B. – A property (i) that does not meet the definition of a Class A
5 property and (ii) that would enhance the value of adjacent land by allowing
6 larger or more extensive uses when joined to the adjacent land.

7 (3) Class C. – A property that does not meet the definition of a Class A or Class
8 B property.

9 **"§ 136-44.72. Prompt sale of unused property.**

10 The Department shall attempt to promptly sell all unused property in accordance with
11 G.S. 136-44.73 through G.S. 136-44.75.

12 **"§ 136-44.73. Sale of Class A property.**

13 (a) Public Sale. – Class A property shall be sold by public sale to the highest bidder
14 following advertisement.

15 (b) Advertisement. – The Department shall take all of the following steps to advertise
16 the sale of a Class A property:

17 (1) Advertise the sale by publication in a newspaper having general circulation
18 in the county in which the property is situated.

19 (2) Make the following information about the property being sold available to
20 the public both on its Web site and by mail:

21 a. Current zoning information.

22 b. Adjacent uses.

23 c. Land-use plans of the local jurisdiction, if known.

24 d. Any other relevant information.

25 (3) Solicit upset bids from the public for any bid received that exceeds ten
26 thousand dollars (\$10,000).

27 (c) Contingent Bids. – A bidder may make a contingent bid to purchase Class A
28 property. However, a contingent bid shall be accompanied by earnest money in an amount
29 determined pursuant to the following requirements:

30 (1) For contingency periods that last 60 days or less, no earnest money is
31 required.

32 (2) For contingency periods that will last beyond 60 days, one percent (1%) of
33 the bid price is required for each calendar month that the contingency period
34 will extend beyond the initial 60-day period. For purposes of this
35 subdivision, any fraction of a calendar month shall be considered a full
36 calendar month. Additional contingency periods may be granted on a
37 monthly basis in exchange for additional earnest money of one percent (1%)
38 per month requested.

39 (d) Upset Bids. – The Department shall consider any upset bid received during the 10
40 business days following the conclusion of bidding on a particular property. The receipt of an
41 upset bid shall restart the 10-day period for consideration of upset bids.

42 (e) Disposition of Earnest Money. – Earnest money shall be applied to the purchase
43 price of real property when sold to the bidder tendering the funds, but it shall be returned to the
44 bidder in the event that the bidder's bid is superseded by an upset bid. Earnest money shall not
45 be returned to a bidder in the event that the bidder elects not to purchase the property.

46 **"§ 136-44.74. Sale of Class B property.**

47 (a) Negotiated Sale to Adjacent Owner. – Class B property shall be offered for sale to
48 the owner or owners of all real property that is adjacent to the property.

49 (b) Acceptable Price. – If only one adjacent landowner offers to purchase the property,
50 the property shall be sold to that adjacent landowner so long as the offered price is at least forty
51 percent (40%) of the appraised value of the property. If more than one adjacent owner offers to

1 purchase the property, then the property shall be sold to the owner offering the highest purchase
2 price.

3 (c) Upset Bids. – If the highest purchase price offered for a particular property is eighty
4 percent (80%) or more of the appraised value of the property, then upset bids shall not be
5 considered. However, if the highest purchase price offered is less than eighty percent (80%) of
6 the property's appraised value, then the Department shall consider any upset bid received
7 during the 40 calendar days following receipt of the highest offer. Additionally, if the highest
8 bid thus far received exceeds ten thousand dollars (\$10,000), the Department shall by
9 publication in a newspaper having general circulation in the county in which the property is
10 situated notify the public that upset bids for purchase of the property will be considered during
11 this period. Receipt of an upset bid shall restart the 40-day period for consideration of upset
12 bids.

13 **"§ 136-44.75. Sale of Class C property.**

14 (a) Negotiated Sale to Adjacent Owner. – Class C property shall be offered for sale to
15 the owner or owners of all real property that is adjacent to the property.

16 (b) Acceptable Price. – If only one adjacent owner offers to purchase the property, the
17 property shall be sold to that adjacent landowner so long as the offered price is at least forty
18 percent (40%) of the appraised value of the property. If more than one adjacent owner offers to
19 purchase the property, then the property shall be sold to the landowner offering the highest
20 purchase price. Upset bids shall not be considered.

21 **"§ 136-44.76. Auction of unsold unused property.**

22 (a) Unsold Property Shall Be Auctioned. – If any unused property remains unsold after
23 one year, the property shall be sold at public auction. For purposes of this requirement, the
24 one-year period begins when the sale of the property is first publically advertised or when the
25 property is first offered for sale to adjacent landowners, as appropriate.

26 (b) Reserve. – Unused property auctioned pursuant to this section shall be sold with
27 reserve according to the following schedule:

28 (1) Class A Property – 40% of appraised value.

29 (2) Class B Property – 30% of appraised value.

30 (3) Class C Property – No reserve.

31 (c) Properties That Do Not Sell at Auction. – The Department shall periodically do all
32 of the following with respect to any property that initially fails to sell at an auction undertaken
33 pursuant to this section:

34 (1) Offer the property for sale to the owner or owners of all real property that is
35 adjacent to the property. If only one adjacent landowner offers to purchase
36 the property, the property shall be sold to that adjacent landowner at the
37 negotiated price with no reserve. If more than one adjacent owner offers to
38 purchase the property, then the property shall be sold to the landowner
39 offering the highest purchase price. Upset bids shall not be considered.

40 (2) Make an additional attempt to auction the property in accordance with this
41 section if an adjacent owner does not purchase the property pursuant to
42 subdivision (1) of this subsection.

43 **"§ 136-44.77. Identification of unused property.**

44 Whenever the Department completes a project and there is associated real property that was
45 not used for the project, the Department shall examine whether or not that property is any of the
46 following:

47 (1) Unused property that can be sold. Any property identified as unused
48 property pursuant to this subdivision shall be classified and sold in the
49 manner prescribed by this Article.

50 (2) Property that cannot be sold either because (i) it does not constitute unused
51 property; (ii) it is not owned in fee simple by the State; or (iii) it is

1 environmentally contaminated. The Department shall document the reason
2 that a property cannot be sold pursuant to this subdivision and shall review
3 this determination at least every 10 years.

- 4 (3) Property that cannot be sold because it is unknown whether or not the
5 property is needed for future transportation purposes. The Department shall
6 document when it determines that a property cannot be sold pursuant to this
7 subdivision and shall review this determination at least every five years.

8 **"§ 136-44.78. Disapproval of certain sales by Governor and Council of State.**

9 (a) Notification Required. – The Department shall notify the Governor and Council of
10 State of any proposed sale under this Article of land with an appraised value of at least
11 twenty-five thousand dollars (\$25,000).

12 (b) Approval Not Required. – Notwithstanding Article 7 of Chapter 146 of the General
13 Statutes, Governor and Council of State approval of a sale under this Article is not required.

14 (c) Disapproval of Certain Sales Authorized. – If the Governor and Council of State
15 disapprove of a proposed sale of land with an appraised value of at least twenty-five thousand
16 dollars (\$25,000) within 30 days of being notified of it, then the sale shall not be completed.

17 **"§ 136-44.79. Sale of condemned property to its previous owner.**

18 Nothing in this Article shall preclude the sale of condemned property to its former owner
19 pursuant to G.S. 136-19(b)."

20 **SECTION 2.** The Department of Transportation shall conduct the same review for
21 projects completed prior to the effective date of this act that is required prospectively by
22 G.S. 136-44.77, as enacted by Section 1 of this act. Properties shall be disposed of in the
23 manner provided by G.S. 136-44.77.

24 **SECTION 3.** No later than January 1, 2014, the Department of Transportation shall
25 report to the Joint Legislative Commission on Governmental Operations on the classification
26 and sale of properties pursuant to Article 21 of Chapter 136 of the General Statutes, as enacted
27 by this act. At a minimum, this report shall include information on the following:

- 28 (1) The number and type of properties classified.
29 (2) The number and type of properties sold, including information about the
30 manner of sale, the type of purchaser, the per-sale average and total dollar
31 sales figures, and the average ratio of sale price to appraised value of the
32 properties sold.

33 **SECTION 4.** G.S. 136-19 reads as rewritten:

34 **"§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings;**
35 **federal parkways.**

36 (a) The Department of Transportation is vested with the power to acquire either in the
37 nature of an appropriate easement or in fee simple such rights-of-way and title to such land,
38 gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry
39 beds, lime or other earth or mineral deposits or formations, and such standing timber as it may
40 deem necessary and suitable for transportation infrastructure construction, including road
41 construction, maintenance, and repair, and the necessary approaches and ways through, and a
42 sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to
43 properly prosecute the work, by purchase, donation, or condemnation, in the manner hereinafter
44 set out. ~~If the Department of Transportation acquires by purchase, donation, or condemnation~~
45 ~~part of a tract of land in fee simple for highway right of way as authorized by this section and~~
46 ~~the Department of Transportation later determines that the property acquired for transportation~~
47 ~~infrastructure, including highway right of way, or a part of that property, is no longer needed~~
48 ~~for infrastructure right of way, then the Department shall give first consideration to any offer to~~
49 ~~purchase the property made by the former owner. The Department may refuse any offer that is~~
50 ~~less than the current market value of the property, as determined by the Department. Unless the~~
51 ~~Department acquired an entire lot, block, or tract of land belonging to the former owner, the~~

1 ~~former owner must own the remainder of the lot, block, or tract of land from which the~~
2 ~~property was acquired to receive first consideration by the Department of their offer to~~
3 ~~purchase the property.~~

4 (b) ~~Notwithstanding the provisions of subsection (a), if~~ If the Department acquires the
5 property by condemnation and determines that the property or a part of that property is no
6 longer needed for highway right-of-way or other transportation projects, the Department of
7 Transportation may reconvey the property to the former owner upon payment by the former
8 owner of the full price paid to the owner when the property was taken, the cost of any
9 improvements, together with interest at the legal rate to the date when the decision was made to
10 offer the return of the property. Unless the Department acquired an entire lot, block, or tract of
11 land belonging to the former owner, the former owner must own the remainder of the lot,
12 block, or tract of land from which the property was acquired to purchase the property pursuant
13 to this subsection.

14 (c) ~~The requirements of this section for reconveying property to the former owner,~~
15 ~~regardless of whether such property was acquired by purchase, donation, or condemnation,~~
16 ~~shall not apply to property acquired outside the right-of-way as an "uneconomic remnant" or~~
17 ~~"residue".~~

18 (d) The Department of Transportation is also vested with the power to acquire such
19 additional land alongside of the rights-of-way for transportation projects, including roads as in
20 its opinion may be necessary and proper for the protection of the transportation projects,
21 including roads and roadways, and such additional area as may be necessary as by it
22 determined for approaches to and from such material and other requisite area as may be desired
23 by it for working purposes. The Department of Transportation may, in its discretion, with the
24 consent of the landowner, acquire in fee simple an entire lot, block or tract of land, if by so
25 doing, the interest of the public will be best served, even though said entire lot, block or tract is
26 not immediately needed for right-of-way purposes.

27 (e) Notwithstanding any other provisions of law or eminent domain powers of utility
28 companies, utility membership corporations, municipalities, counties, entities created by
29 political subdivisions, or any combination thereof, and in order to prevent undue delay of
30 highway projects because of utility conflicts, the Department of Transportation may condemn
31 or acquire property in fee or appropriate easements necessary to provide transportation project
32 rights-of-way for the relocation of utilities when required in the construction, reconstruction, or
33 rehabilitation of a State transportation project. The Department of Transportation shall also
34 have the authority, subject to the provisions of G.S. 136-19.5(a) and (b), to, in its discretion,
35 acquire rights-of-way necessary for the present or future placement of utilities as described in
36 G.S. 136-18(2).

37 (f) Whenever the Department of Transportation and the owner or owners of the lands,
38 materials, and timber required by the Department of Transportation to carry on the work as
39 herein provided for, are unable to agree as to the price thereof, the Department of
40 Transportation is hereby vested with the power to condemn the lands, materials, and timber and
41 in so doing the ways, means, methods, and procedure of Article 9 of this Chapter shall be used
42 by it exclusively.

43 (g) The Department of Transportation shall have the same authority, under the same
44 provisions of law provided for construction of State transportation projects, for acquirement of
45 all rights-of-way and easements necessary to comply with the rules and regulations of the
46 United States government for the construction of federal parkways and entrance roads to
47 federal parks in the State of North Carolina. The acquirement of a total of 125 acres per mile of
48 said parkways, including roadway and recreational, and scenic areas on either side thereof,
49 shall be deemed a reasonable area for said purpose. The right-of-way acquired or appropriated
50 may, at the option of the Department of Transportation, be a fee-simple title. The said
51 Department of Transportation is hereby authorized to convey such title so acquired to the

1 United States government, or its appropriate agency, free and clear of all claims for
2 compensation. All compensation contracted to be paid or legally assessed shall be a valid claim
3 against the Department of Transportation, payable out of the State Highway Fund. Any
4 conveyance to the United States Department of Interior of land acquired as provided by this
5 section shall contain a provision whereby the State of North Carolina shall retain concurrent
6 jurisdiction over the areas conveyed. The Governor is further authorized to grant concurrent
7 jurisdiction to lands already conveyed to the United States Department of Interior for parkways
8 and entrances to parkways.

9 (h) The action of the Department of Transportation heretofore taken in the acquirement
10 of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United
11 States government is hereby ratified and approved and declared to be a reasonable exercise of
12 the discretion vested in the said Department of Transportation in furtherance of the public
13 interest.

14 (i) When areas have been tentatively designated by the United States government to be
15 included within a parkway, but the final survey necessary for the filing of maps as provided in
16 this section has not yet been made, no person shall cut or remove any timber from said areas
17 pending the filing of said maps after receiving notice from the Department of Transportation
18 that such area is under investigation; and any property owner who suffers loss by reason of the
19 restraint upon his right to use the said timber pending such investigation shall be entitled to
20 recover compensation from the Department of Transportation for the temporary appropriation
21 of his property, in the event the same is not finally included within the appropriated area, and
22 the provisions of this section may be enforced under the same law now applicable for the
23 adjustment of compensation in the acquirement of rights-of-way on other property by the
24 Department of Transportation."

25 **SECTION 5.** The Department of Transportation shall treat the Rodney Orr Bypass
26 surplus right-of-way property as unused property and shall sell it in accordance with Article 2F
27 of Chapter 136 of the General Statutes, as enacted by Section 1 of this act.

28 **SECTION 6.** This act becomes effective October 1, 2013.