

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 959

Short Title: Streamline DOT Sale of Unused Properties. (Public)

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

Referred to: Transportation.

May 17, 2012

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, AS RECOMMENDED BY THE HOUSE  
5 SELECT COMMITTEE ON STATE-OWNED ASSETS.

6 The General Assembly of North Carolina enacts:

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

9 "Article 2F.

10 "Identification and Sale of Unused Property.

11 "§ 136-44.70. Definitions.

12 The following definitions apply in this Article:

- 13 (1) Contingent bid. – A bid for the purchase of a Class A property that is made  
14 contingent on the elapsing of a due diligence period or on particular action  
15 being taken with respect to a rezoning application. Subject to the provisions  
16 of G.S. 136-44.73(c), the bidder shall determine the duration of the  
17 contingency period.
- 18 (2) Department. – The Department of Transportation.
- 19 (3) Due diligence period. – A period of time during which the potential  
20 purchaser of a Class A property may conduct inspections, appraisals, and  
21 related activities whose purpose is to determine the desirability of  
22 purchasing the property at issue.
- 23 (4) Earnest money. – Funds required to accompany a contingent bid in  
24 accordance with G.S. 136-44.73(c).
- 25 (5) Unused property. – Real property owned by or allocated to the Department  
26 that is not needed for current or future transportation purposes, including  
27 residue properties, uneconomic remnant properties, and property identified  
28 pursuant to G.S. 136-44.77(1).
- 29 (6) Upset bid. – A bid to purchase unused property that is at least five percent  
30 (5%) higher than the highest bid for the property thus far received.

31 "§ 136-44.71. Classification of unused property.

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

- 34 (1) Class A. – A property (i) whose size and road access are sufficient to allow  
35 commercial or residential development of one or more stand-alone projects



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1 without requiring the acquisition of additional real property; and (ii) whose  
2 size and shape are sufficient to allow compliance with zoning and  
3 development standards for parking, setbacks, side and front yard  
4 requirements, and access.

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

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

10 **"§ 136-44.72. Prompt sale of unused property.**

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

13 **"§ 136-44.73. Sale of Class A property.**

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

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

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

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

22 a. Current zoning information.

23 b. Adjacent uses.

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

25 d. Any other relevant information.

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

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

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

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

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

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

47 **"§ 136-44.74. Sale of Class B property.**

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

50 (b) Acceptable Price. – If only one adjacent landowner offers to purchase the property,  
51 the property shall be sold to that adjacent landowner so long as the offered price is at least forty

1 percent (40%) of the appraised value of the property. If more than one adjacent owner offers to  
2 purchase the property, then the property shall be sold to the owner offering the highest purchase  
3 price.

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

14 **"§ 136-44.75. Sale of Class C property.**

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

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

22 **"§ 136-44.76. Auction of unsold unused property.**

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

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

- 29 (1) Class A Property – 40% of appraised value.
- 30 (2) Class B Property – 30% of appraised value.
- 31 (3) Class C Property – No reserve.

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

- 35 (1) Offer the property for sale to the owner or owners of all real property that is  
36 adjacent to the property. If only one adjacent landowner offers to purchase  
37 the property, the property shall be sold to that adjacent landowner at the  
38 negotiated price with no reserve. If more than one adjacent owner offers to  
39 purchase the property, then the property shall be sold to the landowner  
40 offering the highest purchase price. Upset bids shall not be considered.
- 41 (2) Make an additional attempt to auction the property in accordance with this  
42 section, if an adjacent owner does not purchase the property pursuant to  
43 subdivision (1) of this subsection.

44 **"§ 136-44.77. Identification of unused property.**

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

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

1           (2) Property that cannot be sold either because (i) it does not constitute unused  
2 property; (ii) it is not owned in fee simple by the State; or (iii) it is  
3 environmentally contaminated. The Department shall document the reason  
4 that a property cannot be sold pursuant to this subdivision and shall review  
5 this determination at least every 10 years.

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

10 **"§ 136-44.78. Disapproval of Certain Sales by Governor and Council of State.**

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

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

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

19 **"§ 136-44.79. Sale of condemned property to its previous owner.**

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

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

26           **SECTION 3.** No later than January 1, 2013, the Department of Transportation shall  
27 report to the Joint Legislative Commission on Governmental Operations on the classification  
28 and sale of properties pursuant to Article 21 of Chapter 136 of the General Statutes, as enacted  
29 by this act. At a minimum, this report shall include information on the following:

30           (1) The number and type of properties classified.

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

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

36 **"§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings;**  
37 **federal parkways.**

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

1 ~~less than the current market value of the property, as determined by the Department. Unless the~~  
2 ~~Department acquired an entire lot, block, or tract of land belonging to the former owner, the~~  
3 ~~former owner must own the remainder of the lot, block, or tract of land from which the~~  
4 ~~property was acquired to receive first consideration by the Department of their offer to~~  
5 ~~purchase the property.~~

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

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

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

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

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

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

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

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

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

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

30 **SECTION 6.** This act becomes effective October 1, 2012.