

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 274  
Second Edition Engrossed 5/9/91

Short Title: D.O.T. Surplus Right-Of-Way Sales.

(Public)

Sponsors: Senator Daniel.

Referred to: Transportation.

March 25, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THE SALE OF SURPLUS RIGHT-OF-WAY BY THE  
3 DEPARTMENT OF TRANSPORTATION.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 136-19 reads as rewritten:

6 "**§ 136-19. ~~Acquirement~~ Acquisition of land and deposits of materials;**  
7 **condemnation proceedings; federal parkways.**

8 The Department of Transportation is vested with the power to acquire either in the  
9 nature of an appropriate easement or in fee simple such rights-of-way and title to such  
10 land, gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries,  
11 or quarry beds, lime or other earth or mineral deposits or formations, and such standing  
12 timber as it may deem necessary and suitable for road construction, maintenance, and  
13 repair, and the necessary approaches and ways through, and a sufficient amount of land  
14 surrounding and adjacent thereto, as it may determine to enable it to properly prosecute  
15 the work, ~~either~~ by purchase, donation, or condemnation, in the manner hereinafter set  
16 out. ~~If any parcel is acquired~~ the Department of Transportation acquires part of a tract of  
17 land in fee simple for highway right-of-way as authorized by this section and the  
18 Department of Transportation later determines that the ~~parcel~~ property acquired for  
19 highway right-of-way, or a part of that property, is ~~not~~ no longer needed for highway  
20 purposes, ~~right-of-way,~~ then the Department shall give first consideration ~~shall be given~~  
21 to any offer to ~~repurchase~~ purchase the property made by the former owner from whom  
22 said ~~parcel~~ was acquired or the owner, his heirs or assigns of such owner. ~~assigns, including~~  
23 grantees and devisees, if the former owner, his heirs, or assigns own the adjoining

1 property that is the remainder of the original tract from which the property was  
2 acquired. The Department of Transportation may refuse any offer that is less than the  
3 current market value of the property, as determined by the Department of  
4 Transportation. However, the purchase price of fee simple right-of-way determined to  
5 be surplus and abandoned by the Department of Transportation at the request of the  
6 abutting property owner shall be based upon the enhancement value to the abutting  
7 property as determined by the Department of Transportation, but it shall not be less than  
8 the current market value of the property as determined by the Department of  
9 Transportation. The requirement of this section for giving 'first consideration' to the  
10 former owner's offer shall not apply to property acquired outside the right-of-way as an  
11 'uneconomic remnant' or 'residue'. The Department of Transportation is also vested  
12 with the power to acquire such additional land alongside of the rights-of-way or roads as  
13 in its opinion may be necessary and proper for the protection of the roads and roadways,  
14 and such additional area as may be necessary as by it determined for approaches to and  
15 from such material and other requisite area as may be desired by it for working  
16 purposes. The Department of Transportation may, in its discretion, with the consent of  
17 the landowner, acquire in fee simple an entire lot, block or tract of land, if by so doing,  
18 the interest of the public will be best served, even though said entire lot, block or tract is  
19 not immediately needed for right-of-way purposes.

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

30 Whenever the Department of Transportation and the owner or owners of the lands,  
31 materials, and timber required by the Department of Transportation to carry on the work  
32 as herein provided for, are unable to agree as to the price thereof, the Department of  
33 Transportation is hereby vested with the power to condemn the lands, materials, and  
34 timber and in so doing the ways, means, methods, and procedure of Article 9 of this  
35 Chapter shall be used by it exclusively.

36 The Department of Transportation shall have the same authority, under the same  
37 provisions of law provided for construction of State highways, for acquirement of all  
38 rights-of-way and easements necessary to comply with the rules and regulations of the  
39 United States government for the construction of federal parkways and entrance roads to  
40 federal parks in the State of North Carolina. The acquirement of a total of 125 acres per  
41 mile of said parkways, including roadway and recreational, and scenic areas on either  
42 side thereof, shall be deemed a reasonable area for said purpose. The right-of-way  
43 acquired or appropriated may, at the option of the Department of Transportation, be a  
44 fee-simple title. The said Department of Transportation is hereby authorized to convey

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

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

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

27 Sec. 2. This act is effective upon ratification.