

2017 Tennessee Code
Title 12 - Public Property, Printing and
Contracts
Chapter 2 - Administration and
Disposition of State Property
Part 1 - General Provisions
§ 12-2-112. Disposal of surplus interests
in real property and energy resources.

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- (a) The commissioner of general services, with the approval of the governor and attorney general and reporter, may sell, lease or otherwise convey any interest in surplus state real property according to the following provisions:
 - (1) Real property shall not be sold in fee, and any interest or rights in minerals, coal, natural gas, oil, timber and any other energy related resources shall not be conveyed if there is any feasible use for the property by any state agency, as determined by the governor, the attorney general and reporter and the commissioner of general services. Should the state agency have an approved use for the property, the commissioner is authorized to transfer jurisdiction to the appropriate agency at no cost;
 - (2) As to sales in fee, and to any conveyance of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy-related resources, such property shall be appraised by at least two (2) independent, qualified appraisers, wholly disconnected from state government or any other legal governmental entity except as may otherwise be determined by the state building commission;
 - (3) As to sales in fee, and to any conveyance of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy-related resources, such surplus property having an average appraised value exceeding twenty-five thousand dollars (\$25,000) shall be advertised not less than one (1) time in a newspaper which is local with respect to the property to be sold and once in a newspaper in either Nashville, Memphis, Chattanooga or Knoxville, whichever is nearest by air; provided, that if one (1) of these four (4) cities is the situs of the property to be sold, advertisement shall be made twice within a two-week period. Any interest or rights in minerals, coal, natural gas, oil, timber and any other energy-related resources shall be sold by the sealed bid method with the condition that the state shall have the right to refuse any and all bids. Fee

interests in real property shall be sold by the sealed bid method or by public auction in accordance with policies established by the state building commission, with the condition that the state shall have the rights to refuse any and all bids. As used in this subdivision (a)(3), "public auction" may include, without limitation, Internet auctions and in-person auctions so long as such auctions are open for participation by the public at large. Upon the approval of the governor, the attorney general and reporter, and the commissioner, the successful bidder will be notified of the intent to award within a period of forty-five (45) days commencing from the date of bid openings;

- (4) All interests in real property other than the fee interest, including, but not limited to, leases, easements and rights-of-way, shall be disposed of in accordance with policies established by the state building commission, including advertisement and appraisal where deemed appropriate by the state building commission; provided, however, that, if the property was acquired by or for the use of the department of transportation for right-of-way, then the department of transportation may convey the interests in the property by negotiated sale or disposal to any legal governmental body for a public use purpose, subject to reversion to the department of transportation for failure to continue public ownership and use, or to the former owner or an adjoining owner for fair market value, in accordance with procedures established in subdivision (a)(8). If approved by the department of transportation, and the federal highway administration where required by federal law, a functional replacement of real property may be considered to continue public ownership and use, and shall not be subject to reversion to the department of transportation, if the replacement property is at least equal in fair market value to the property being replaced. For the purposes of this subdivision (a)(4), a functional replacement of real property means real property that serves the same function as the real property conveyed by the state by providing equivalent utility, as determined by the department of transportation, and the federal highway administration where required by federal law. The fair market value of the replacement property shall be determined in accordance with the procedures for determining the fair market value of the surplus property established in subdivision (a)(8). This subdivision (a)(4) shall not apply to the disposal or conveyance in any manner of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy related resources; provided, that the commission shall have authority to promulgate rules and regulations over the disposal or conveyances pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;
- (5) Subdivisions (a)(2) and (3) may be waived to permit the negotiated sale of any such property to any legal governmental body for a public use purpose, and, further, to permit any other negotiated sale or disposal without advertisement or appraisal as the state building commission may deem in the best interest of the state. Subdivisions (a)(2) and (3) may also

be waived to permit the commissioner, with the approval of the attorney general and reporter and the governor, to grant such easements and rights-of-way as are deemed necessary to provide services for the benefit of the state agency, department or institution or of the general public;

- (6) The final conveyance of any property shall be effective to vest in the purchaser thereof such title as the state shall have in the premises; the state shall not be liable upon any covenant of warranty or seisin irrespective of whether or not the same is contained in such conveyance;
- (7) The funds so collected from the sale and conveyance of such property not otherwise specified shall be paid into the general fund of the state; provided, that all expenses incurred during such sale shall be paid from the proceeds and the balance of such proceeds shall be deposited into the general fund, except where otherwise provided by law. In instances in which other law specifies that the proceeds be deposited into a fund other than the general fund or into a special account in the general fund, the expenses of such sale or conveyance shall be paid from such other fund or special account. The funds so collected from the sale and conveyance of any property which has been deemed surplus right-of-way held for the use or benefit of the department of transportation shall be paid into the highway fund, and all expenses incurred during such sale shall be paid from the highway fund;
- (8)
 - (A) If the property was acquired by or for the use of the department of transportation for right-of-way, if its fair market value does not exceed seventy-five thousand dollars (\$75,000) or such amounts in excess of seventy-five thousand dollars (\$75,000) as may be approved by the state building commission, and if any adjoining property owner or the former owner of that property wishes to purchase the property, or if a legal governmental body wishes to acquire the property for a public use purpose, then this section shall not apply. Instead, the commissioner of transportation is authorized to declare the property surplus if the commissioner determines that the purpose of its acquisition has been completed and that the property is no longer needed by the department of transportation or another state agency, and may sell it to any adjoining property owner or the former owner of that property, for an amount representing not less than the fair market value, together with costs; provided, however, that the department of transportation may convey the property or any interest in the property by negotiated sale or disposal to any legal governmental body for a public use purpose, subject to reversion to the department of transportation for failure to continue public ownership and use. If approved by the department of transportation, and the federal highway administration where required by federal law, the department of transportation may accept real property in exchange for the surplus real property conveyed if the replacement property is at least equal

in fair market value to the surplus property being replaced. The fair market value of the replacement property shall be determined in accordance with the procedures for determining the fair market value of the surplus property established in this subdivision (a)(8). The commissioner of general services shall concur in the fair market value amount or in the negotiated sale or disposal of the property to a legal governmental body for a public use purpose. If in the judgment of the department of transportation a survey of the property is required, the prospective purchaser shall pay the department of transportation in advance for the cost of the survey;

- (B) The former property owner's right shall terminate ten (10) years after the date of acquisition by the department of transportation by conveyance or date of taking in condemnation of the subject property by the department. The former property owner's right shall not transfer to the owner's heirs. The former property owner shall have first right of refusal to purchase the right-of-way; provided, however, that the department may convey the property or any interest in the property to a legal governmental body for a public use purpose, subject to reversion to the department of transportation for failure to continue public ownership and use, without offering the former owner a first right of refusal to purchase the property. If the former property owner relinquishes the owner's right or the right has expired, the property may be conveyed to an adjoining property owner. If more than one (1) adjoining property owner is interested in purchasing the right-of-way, the interested adjoining property owners shall submit sealed bids to the department of transportation, with the minimum bid price being the fair market value determined by appraisal, and the property may be conveyed to the adjoining property owner offering the highest responsive bid. The successful bidder shall reimburse any unsuccessful prospective purchaser for survey and appraisal costs incurred in accordance with the requirements of this subdivision (a)(8);
- (C) For the purposes of this subdivision (a)(8), the fair market value of surplus right-of-way property shall be determined in accordance with the following procedures:
 - (i) The department of transportation shall make a preliminary planning estimate of the fair market value of the property in accordance with procedures that the department may establish;
 - (ii) If the department of transportation's preliminary planning estimate of the fair market value of the property is ten thousand dollars (\$10,000) or less, the property shall be appraised by an appraiser on staff with the department of transportation at no cost to the prospective purchaser;

- (iii) If the department of transportation's preliminary planning estimate or subsequent staff appraisal of the fair market value of the property is greater than ten thousand dollars (\$10,000), the property shall be appraised by an independent appraiser whose services shall be procured by the department of transportation in accordance with state law. The independent appraiser must be licensed and certified by the Tennessee real estate appraiser commission and shall be selected from a list of prequalified appraisers approved by the department of transportation. The prospective purchaser shall pay the department of transportation in advance for the cost of the independent appraisal;
- (iv) The initial appraisal shall be subject to review and approval by the department of transportation in accordance with procedures that the department of transportation may establish. The appraisal review shall be conducted, at the department of transportation's expense, by a review appraiser who is licensed and certified by the Tennessee real estate appraiser commission and who is either employed by or under contract with the department of transportation. The review appraiser shall either approve the initial appraisal or reject the initial appraisal and reappraise the property to determine the fair market value of the property, subject to the approval of the director of the right-of-way division of the department of transportation or the director's designee. If approved by the director or the director's designee, the review appraiser's determination shall be presented to a prospective purchaser as the fair market value of the property;
- (v) If a prospective purchaser does not accept the appraised fair market value of the property as determined by the review appraiser, the prospective purchaser may request a final review and reconsideration by the commissioner of transportation or the commissioner's designee. The commissioner or the commissioner's designee shall obtain a final review of the appraisal by a review appraiser who is licensed and certified by the Tennessee real estate appraiser commission and who is either employed by or under contract with the department of transportation; provided, however, that the final review appraiser shall not be the same person who previously reviewed the initial appraisal. The prospective purchaser shall be given the opportunity to present information concerning the value of the property for the consideration of the final review appraiser. The final review appraiser shall consider all

relevant information, including any appraisal previously performed by or for the department of transportation, and shall have the authority to reappraise or make adjustments in the appraised fair market value, in accordance with generally accepted professional standards and guidelines. The final review appraiser's determination of the fair market value of the property shall be subject to the approval of the commissioner or the commissioner's designee; and

- (vi) The department's final determination of the fair market value of the property is subject to the concurrence of the commissioner of general services;
- (9) If property acquired by the department of transportation for a right-of-way through the exercise of eminent domain or otherwise is determined by the commissioner of transportation to be no longer needed by the department of transportation, and the excess property is not transferred to another state agency or conveyed to some other legal governmental body as provided in this section, and the excess property is not disposed of in accordance with subdivision (a)(8), the excess property shall be disposed of by the department of general services in accordance with the following procedures:
 - (A) The excess property shall be sold to any adjoining property owner or the former owner of that property at fair market value. All funds collected from the sale of the property shall be paid into the highway fund, as provided in subdivision (a)(7);
 - (B) The costs associated with the conveyance of the land, including, but not limited to, the cost of appraising and surveying the property, shall be reimbursed to the state by the purchaser of the property;
 - (C) Any conveyance of the property made pursuant to this subsection (a) shall be subject to approval in advance by the state building commission;
 - (D) If no adjoining property owner or the former owner of that property is able and willing to purchase the excess property at fair market value, then the excess property may be disposed of in accordance with existing statutes;
 - (E) For the purposes of this subsection (a), the fair market value of the excess property shall initially be determined by the state through procedures established by the state building commission. If such initial determination of fair market value is deemed unacceptable by the intended purchaser, the fair market value of the excess property shall then be determined by averaging the state's initial determination of fair market value with two (2) additional fair market value appraisals of the excess property. The two (2) additional appraisals shall be performed by two (2) nonassociated appraisers from the locality in which the property is located. The two (2) appraisers shall be mutually agreed upon by

the parties to the conveyance; none of the appraisers involved shall have any personal or financial interest in the conveyance;

- (F) The former property owner's right shall terminate ten (10) years after the date of acquisition by the department of transportation by conveyance or date of taking in condemnation of the subject property by the department. The former property owner's right shall not transfer to such owner's heirs. The former property owner shall have the first right of refusal to purchase the right-of-way. If the former property owner relinquishes such owner's right, the adjoining property owners interested in purchasing the right-of-way shall submit sealed bids with the minimum bid price being the fair market value determined by appraisal;
- (G) If approved by the department of transportation, and the federal highway administration where required by federal law, the department of general services may accept real property in exchange for the excess real property conveyed if the replacement property is at least equal in fair market value to the excess property being replaced. The fair market value of the replacement property shall be determined in accordance with the procedures for determining the fair market value of the excess property established in this subdivision (a)(9);
- (10) Notwithstanding any provision to the contrary, any funds collected from the lease of surplus state real property for communications relay apparatus or antennae sites that would otherwise be paid into the general fund of the state pursuant to subdivision (a)(7) shall be specifically earmarked for maintenance of state park facilities, including furniture, fixtures and equipment. Any such funds that are unencumbered or unexpended at the end of any fiscal year shall not revert to the state general fund, but shall be carried forward until expended for the purposes stated in this section;
- (11)
 - (A) Notwithstanding subdivision (a)(9) or any other law to the contrary, when and if the state transfers to the local government in which any tract or combination of tracts of property which are contiguous to one another and exceed twenty (20) acres in size and which were acquired by the department of transportation as part of an uncompleted and cancelled interstate and defense highway right-of-way in a county with a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, is located, the transfer shall be subject to final approval by the state building commission and shall only be used for redevelopment pursuant to subdivision (a)(11)(B).
 - (B) Any property transferred pursuant to subdivision (a)(11)(A) shall be subject to the following restrictions:

- (i) Development by the local government of a flowering-tree landscaped parkway-type roadway in accordance with title 54, chapter 17, part 1;
 - (ii) Development of the remaining property, with priority given to subdivision (a)(11)(B)(ii)(a), for:
 - (a) Housing; provided, that some of the land is used for development of affordable housing with the needs of the community for affordable housing properly addressed in that use;
 - (b) School land;
 - (c) Park land;
 - (d) Public spaces; and
 - (e) Associated mixed-use neighborhood uses; and
 - (iii) The roadway involved herein from the end of Sam Cooper Boulevard to East Parkway and all the land involved herein shall conform to the limitations regulating scenic highways as in § 54-17-109, except for § 54-17-109(11); and
- (12) Notwithstanding any provisions of this section to the contrary, if property acquired by or for the use of the department of transportation for right-of-way has not been disposed of in accordance with subdivision (a)(8) or (a)(9) and no person or entity, including the former owner of that property, has been able and willing to purchase the property within five (5) years after the date the property has been offered for sale by the department of transportation, then the property may be sold at public auction pursuant to rules promulgated by the commissioner of transportation.
- (b) The commissioner of general services shall notify the house of representatives and senate member or members from the district in which the property to be sold or conveyed is located, and the notification shall be at least twenty (20) days prior to the agreement of sale or conveyance.
- (c) This section and § 4-15-102 do not apply to timber which is harvested and sold pursuant to bona fide timber management practices. For the purpose of harvesting and selling of timber pursuant to bona fide timber management practices, the timber shall be treated as personal property and sold pursuant to rules and regulations of the procurement commission as provided in part 4 of this chapter.
- (d) This section and § 4-15-102 do not apply to leasing surplus state real property under crop lease arrangements by the Tennessee wildlife resources agency which shall be responsible for the leasing of such surplus state real property for crop leases, as well as being responsible for the administration of all crop leases; such leasing and administration shall be through procedures reviewed and approved by the state building commission.