

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 161*

Short Title: Judicial Timber Sale/Sealed Bid.

(Public)

Sponsors: Senators Hartsell; and Cooper.

Referred to: Judiciary.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR CONDUCTING JUDICIAL SALES
OF TIMBER BY SEALED BID, AS RECOMMENDED BY THE GENERAL
STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-339.3A reads as rewritten:

"§ 1-339.3A. Judge or clerk may order public or private sale.

The judge or clerk of court having jurisdiction has authority in his discretion to determine whether a sale of either real or personal property shall be a public or private ~~sale.~~ sale and whether a public sale of timber, or of timber together with the tract of land upon which the timber is growing, shall be by auction or by sealed bid. Any private sale conducted under an order issued prior to July 1, 1955 by a judge or clerk of court having jurisdiction is hereby validated as to the order that ~~such~~ the sale be a private sale."

Section 2. G.S. 1-339.8(a) reads as rewritten:

"(a) When an order of public sale directs the sales of separate tracts of real property situated in different counties, exclusive jurisdiction over ~~such~~ the sale remains in the superior or district court of the county where the proceeding, in which the order of sale was issued, is pending, but there shall be a separate advertisement, sale and report of sale with respect to the property in each county. In any such sale proceeding, the clerk of the superior court of the county where the original order of sale was issued, has jurisdiction

1 with respect to the resale of separate tracts of property situated in other counties as well
2 as in the clerk's own county, and when the public sale is by auction an upset bid may be
3 filed only with ~~such~~ that clerk, except in those cases where the judge retains resale
4 jurisdiction pursuant to G.S. 1-339.27."

5 Section 3. G.S. 1-339.8(c) reads as rewritten:

6 "(c) ~~The sale,~~ When the public sale is by auction, the sale and each subsequent
7 resale, of each ~~such~~ separate tract shall be subject to a separate upset bid; and to the extent
8 deemed necessary by the judge or clerk of court of the county where the original order of
9 sale was issued, the sale of each tract, after an upset bid thereon, shall be treated as a
10 separate sale for the purpose of determining the procedure applicable thereto."

11 Section 4. G.S. 1-339.13(a) reads as rewritten:

12 "(a) Whenever a public sale is ordered, the order of sale shall

- 13 (1) Designate the person authorized to hold the sale;
- 14 (2) Direct that the property be sold at public auction to the highest bidder;
15 bidder or, in a case in which a sale by sealed bid is authorized by law,
16 direct that the property be sold to the highest bidder and specify whether
17 the sale is to be by public auction or by sealed bid;
- 18 (3) Describe real property to be sold, by reference or otherwise, sufficiently
19 to identify it;
- 20 (4) Describe personal property to be sold, by reference or otherwise,
21 sufficiently to indicate its nature and quantity;
- 22 (5) Designate, consistently with G.S. 1-339.6, the county and the place
23 therein at which the sale is to be held; ~~and~~
- 24 (6) Prescribe the terms of sale, specifying the amount of the cash deposit, if
25 any, to be made by the highest bidder at the ~~sale~~ sale; and
- 26 (7) If the sale is to be by sealed bid, specify:
- 27 a. The minimum number of bids that must be submitted, which
28 shall not be less than three, and
- 29 b. The time at which any cash deposit required of the highest bidder
30 must be made, which shall not be more than three business days
31 after the date on which the sealed bids are opened."

32 Section 5. G.S. 1-339.13(b) reads as rewritten:

33 "(b) The order of public sale may also, but is not required to

- 34 (1) State the method by which the property shall be sold, pursuant to G.S.
35 1-339.9;
- 36 (2) Direct any posting of the notice of sale or any advertisement of the sale,
37 in addition to that required by G.S. 1-339.17 in the case of real property
38 or G.S. 1-339.18 in the case of personal property, which the judge or
39 clerk of the superior court deems ~~advantageous~~ advantageous; and
- 40 (3) Specify the number of appraisals to be obtained pursuant to G.S. 1-
41 339.13A."

42 Section 6. Chapter 1 of the General Statutes is amended by adding a new
43 section to read:

1 **"§ 1-339.13A. Public sale by sealed bid; appraisal, bid procedure.**

2 (a) When a sale by sealed bid is ordered, the person holding the sale, before giving
3 notice of the sale, shall:

4 (1) Obtain one or more appraisals of the timber to be sold, or of the timber
5 and the tract of land upon which is growing if both are to be sold;

6 (2) Determine the place at which and the manner and form in which sealed
7 bids should be submitted;

8 (3) Determine the first date on which sealed bids will be accepted, which
9 shall not be less than five days after the date on which the notice of sale
10 is first published pursuant to G.S. 1-339.17; and

11 (4) Determine the date, time, and place at which sealed bids will be opened.

12 (b) Each appraisal obtained pursuant to subsection (a) of this section shall be made
13 by a registered professional forester or other person qualified by training and experience
14 to appraise the timber to be sold. Copies of all appraisals obtained pursuant to this
15 section shall be included in the report required under G.S. 1-339.24.

16 (c) All sealed bids received on or after the first date set for submitting bids and at
17 or before the time set for opening the bids shall be opened publicly at that time at the
18 place set for doing so. If the minimum number of bids is received and there is only one
19 highest bid, that bid shall be announced at that time; the highest bidder is the purchaser
20 and all bidders shall immediately be notified of that fact. If the minimum number of bids
21 is not received, or if two or more bids in the same amount are the highest bids, that fact
22 shall be announced at that time, and all bidders shall immediately be notified of that fact;
23 the person holding the sale shall then obtain a new order of sale."

24 Section 7. G.S. 1-339.15 reads as rewritten:

25 **"§ 1-339.15. Public sale; contents of notice of sale.**

26 The notice of public sale ~~shall~~ shall:

27 (1) Refer to the order authorizing the sale;

28 (2) ~~Designate~~ If the sale is to be by public auction, designate the date, hour
29 and place of sale;

30 (2a) If the sale is to be by sealed bid, specify:

31 a. The date on which sealed bids will first be accepted;

32 b. The place or address at which sealed bids are to be submitted;

33 c. The manner and form in which sealed bids are to be submitted;

34 d. The time and place at which any sealed bids received will be
35 opened; and

36 e. The minimum number of bids required, as determined pursuant
37 to G.S. 1-339.13(a)(7);

38 (3) Describe real property to be sold, by reference or otherwise, sufficiently
39 to identify it, and may add ~~such~~ any further description as will acquaint
40 bidders with the nature and location of the property;

41 (4) Describe personal property to be sold sufficiently to indicate its nature
42 and quantity, and may add ~~such~~ any further description as will acquaint
43 bidders with the nature of the property;

1 (5) State the terms of the sale, specifying the amount of the cash deposit, if
2 any, to be made by the highest bidder at the sale; ~~and sale and, in the~~
3 case of a sale by sealed bid, the date by which any deposit shall be
4 made, as determined pursuant to G.S. 1-339.13(a)(7); and

5 (6) Include any other provisions required by the order of sale to be included
6 therein."

7 Section 8. G.S. 1-339.17 reads as rewritten:

8 **"§ 1-339.17. Public sale; posting and publishing notice of sale of real property.**

9 (a) The notice of public sale of real property shall

10 (1) Be posted, ~~at the courthouse door~~ in the area designated by the clerk of
11 superior court for the posting of notices in the county in which the
12 property is situated, for thirty days immediately preceding the sale,

13 (2) And in addition thereto,

14 a. If a newspaper qualified for legal advertising is published in the
15 county, the notice shall be published in such a newspaper once a
16 week for at least four successive weeks, but

17 b. If no ~~such~~ newspaper qualified for legal advertising is published
18 in the county, then notice shall be published once a week for at
19 least four successive weeks in a newspaper having a general
20 circulation in the county.

21 (b) When the notice of public sale is published in a newspaper,

22 (1) The period from the date of the first publication to the date of the last
23 publication, both dates inclusive, shall not be less than twenty-two days,
24 including Sundays, and

25 (2) The date of the last publication shall be not more than 10 days preceding
26 the date of the ~~sale~~ sale in a sale by auction, or the date on which sealed
27 bids are opened in a sale by sealed bid.

28 (c) When the real property to be sold is situated in more than one county, the
29 provisions of subsections (a) and (b) of this section shall be complied with in each county
30 in which any part of the property is situated.

31 (c1) When the public sale is by sealed bid, the notice shall also be given in writing,
32 not less than 21 days before the date on which bids are opened, to a reasonable number of
33 prospective timber buyers, which in all cases shall include the timber buyers listed in the
34 office of the North Carolina Division of Forest Resources for the county or counties in
35 which the timber to be sold is located.

36 (d) In addition to the foregoing, the notice of public sale shall be otherwise posted
37 or the sale shall be otherwise advertised as may be required by the judge or clerk pursuant
38 to the provisions of G.S. 1-339.13(b)(2).

39 (e) If the sale is by sealed bid, the person holding the sale shall include in the
40 report required by G.S. 1-339.24 an affidavit showing that the requirements of this
41 section have been complied with and listing all the persons notified pursuant to
42 subsection (c1) of this section."

43 Section 9. G.S. 1-339.18(a) reads as rewritten:

1 "(a) The notice of public sale of personal property, except in the case of perishable
2 property as provided by G.S. 1-339.19, shall be posted, ~~at the courthouse door,~~ in the area
3 designated by the clerk of superior court for the posting of notices, in the county in which
4 the sale is to be held, for ten days immediately preceding the date of sale."

5 Section 10. G.S. 1-339.20(a) reads as rewritten:

6 "(a) A person authorized to hold a public sale by auction may postpone the sale to a
7 day certain not later than six days, exclusive of Sunday, after the original date for the ~~sale~~
8 sale, and a person authorized to hold a public sale by sealed bid may postpone the time
9 for submitting and opening bids to a date, time, and place certain not later than six days,
10 exclusive of Sunday, after the original date for the opening of bids:

11 (1) When there are no bidders, or

12 (2) When, in his judgment, the number of prospective bidders at the sale is
13 substantially decreased by inclement weather or by any casualty, or

14 (3) When there are so many other sales advertised to be held at the same
15 time and place as to make it inexpedient and impracticable, in his
16 judgment, to hold the sale on that day, or

17 (4) When he is unable to hold the sale because of illness or for other good
18 reason, or

19 (5) When other good cause exists."

20 Section 11. G.S. 1-339.20(b) reads as rewritten:

21 "(b) Upon postponement of public sale the person authorized to hold the sale shall
22 personally, or through his agent or attorney

23 (1) At the time and place advertised for the ~~sale,~~ sale or for the opening of
24 sealed bids, publicly announce the postponement ~~thereof, and thereof;~~

25 (2) On the same day, attach to or enter on the original notice of sale or a
26 copy thereof posted ~~at the courthouse door,~~ as provided in G.S. 1-339.17
27 in the case of real property or G.S. 1-339.18 in the case of personal
28 property, a notice of the ~~postponement.~~ postponement; and

29 (3) In the case of a public sale by sealed bid, give notice of postponement to
30 each person who submitted a bid."

31 Section 12. G.S. 1-339.20(c) reads as rewritten:

32 "(c) The ~~posted~~ notice of postponement ~~shall~~ shall:

33 (1) State that the sale is postponed,

34 (2) ~~State~~ In the case of a sale by public auction, state the hour and date to
35 which the sale is postponed,

36 (2a) In the case of a sale by sealed bid, state the date, time, and place to
37 which the opening of bids is postponed,

38 (3) State the reason for the postponement, and

39 (4) Be signed by the person authorized to hold the sale, or by his agent or
40 attorney."

41 Section 13. G.S. 1-339.21 reads as rewritten:

42 "**§ 1-339.21. Public sale; sale by auction; time of sale.**

1 (a) A public sale by auction shall begin at the time designated in the notice of sale
2 or as soon thereafter as practicable, but not later than one hour after the time fixed
3 therefor unless it is delayed by other sales held at the same place.

4 (b) No public sale by auction shall commence before 10:00 o'clock A.M. or after
5 4:00 o'clock P.M.

6 (c) No public sale by auction shall continue after 4:00 o'clock P.M., except that in
7 cities or towns of more than 5,000 inhabitants, as shown by the most recent federal
8 census, sales of personal property may continue until 10:00 o'clock P.M."

9 Section 14. G.S. 1-339.22 reads as rewritten:

10 "**§ 1-339.22. Public sale; sale by auction; continuance of uncompleted sale.**

11 A public sale by auction commenced but not completed within the time allowed by
12 G.S. 1-339.21 shall be continued by the person holding the sale to a designated time
13 between 10:00 o'clock A.M. and 4:00 o'clock P.M. the next following day, other than
14 Sunday. In case ~~such a~~ continuance becomes necessary, the person holding the sale shall
15 publicly announce the time to which the sale is continued."

16 Section 15. G.S. 1-339.24(a) reads as rewritten:

17 "(a) The person holding a public sale shall, within five days after the date of the
18 ~~sale,~~ sale if the sale was by auction, or within five days after the date on which bids were
19 opened if the sale was by sealed bid, file a report thereof with the clerk of the superior
20 court of the county where the proceeding for the sale is pending."

21 Section 16. G.S. 1-339.24(b) reads as rewritten:

22 "(b) The report shall be signed by the person authorized to hold the sale, or by his
23 agent or attorney and shall show

24 (1) The title of the action or proceeding;

25 (2) The authority under which the person making the sale acted;

26 (3) ~~The~~ If the sale was by public auction, the date, hour and place of the
27 sale;

28 (3a) If the sale was by sealed bid, the date, time, and place at which the
29 sealed bids were opened, the number of bids received, and the amount
30 of each bid;

31 (4) A description of real property sold, by reference or otherwise, sufficient
32 to identify it, and, if sold in parts, a description of each part so sold; and

33 (5) A description of personal property sold, sufficient to indicate the nature
34 and quantity of the property sold to each purchaser;

35 (6) The names of the purchasers;

36 (7) The price at which the property, or each part thereof, was sold and that
37 ~~such~~ this price was the highest bid therefor; and

38 (8) The date of the report."

39 Section 17. G.S. 1-339.24 is amended by adding a new subsection to read:

40 "(d) The report of a sale by sealed bid shall include the information required by
41 G.S. 1-339.13A(b) and G.S. 1-339.17(c1)."

42 Section 18. G.S. 1-339.25(a) reads as rewritten:

1 "(a) An upset bid is an advanced, increased or raised bid in a public sale by auction
2 whereby a person offers to purchase real property theretofore sold, for an amount
3 exceeding the reported sale price by ten percent (10%) of the first \$1000 thereof plus five
4 percent (5%) of any excess above \$1000, but in any event with a minimum increase of
5 \$25, ~~such the~~ increase being deposited in cash, or by certified check or cashier's check
6 satisfactory to the said clerk, with the clerk of the superior court, with whom the report
7 of the sale was filed, within ten days after the filing of ~~such the~~ report; ~~such the~~ deposit to
8 be made with the clerk of superior court before the expiration of the tenth day, and if the
9 tenth day shall fall upon a Sunday or holiday, or upon a day in which the office of the
10 clerk is not open for the regular dispatch of its business, the deposit may be made on the
11 day following when said office is open for the regular dispatch of its business. An upset
12 bid need not be in writing, and the timely deposit with the clerk of the required amount,
13 together with an indication to the clerk as to the sale to which it is applicable, is sufficient
14 to constitute the upset bid, subject to the provisions of subsection ~~(b)~~-(b) of this section."

15 Section 19. G.S. 1-339.25 is amended by adding a new subsection to read:

16 "(e) The provisions of this section do not apply to public sales by sealed bid."

17 Section 20. G.S. 1-339.26 reads as rewritten:

18 "**§ 1-339.26. Public sale; sale by auction; separate upset bids when real property**
19 **sold in parts; subsequent procedure.**

20 When real property is sold at public sale by auction in parts, as provided by G.S. 1-
21 339.9, the sale, and each subsequent resale, of any ~~such~~ part shall be subject to a separate
22 upset bid; and, to the extent the judge or clerk of court having jurisdiction deems
23 advisable, the sale of each ~~such~~ part shall thereafter be treated as a separate sale for the
24 purpose of determining the procedure applicable thereto."

25 Section 21. The catch line of G.S. 1-339.27 reads as rewritten:

26 "**§ 1-339.27. Public sale; sale by auction; resale of real property; jurisdiction;**
27 **procedure.**"

28 Section 22. G.S. 1-339.27(a) reads as rewritten:

29 "(a) When in a public sale by auction an upset bid is submitted to the clerk of the
30 superior court, together with a compliance bond if one is required, a resale shall be
31 ordered."

32 Section 23. G.S. 1-339.27(b) reads as rewritten:

33 "(b) In any case in which a judge has jurisdiction of the original ~~sale~~, public sale by
34 auction, he may provide by order that jurisdiction is retained for resale purposes, and in
35 ~~such that~~ case when an upset bid is submitted, the judge having jurisdiction shall make
36 the order of resale. In all cases where the judge does not retain jurisdiction of a public
37 sale by auction for resale purposes, and in all cases where a public sale by auction is
38 originally ordered by a clerk, the clerk shall make the order of resale and shall have
39 jurisdiction of the proceeding for resale purposes. Whenever the original order of public
40 sale by auction is made by the judge, the terms of any resale ordered by the clerk shall be
41 consistent with terms of the original order, and the final order of confirmation shall be
42 made by the judge having jurisdiction of the proceeding."

43 Section 24. G.S. 1-339.27(c) reads as rewritten:

1 "(c) Notice of any resale to be held because of an upset bid ~~shall~~ shall:

2 (1) Be posted, ~~at the courthouse door in the area designated by the clerk of~~
3 superior court for the posting of notices in the county in which the
4 property is situated, for fifteen days immediately preceding the sale,

5 (2) And in addition thereto,

6 a. If a newspaper qualified for legal advertising is published in the
7 county, the notice shall be published in such a newspaper once a
8 week for at least two successive weeks, but

9 b. If no ~~such~~ newspaper qualified for legal advertising is published
10 in the county, the notice shall be posted at three other public
11 places in the county for fifteen days immediately preceding the
12 sale."

13 Section 25. G.S. 1-339.27 is amended by adding a new subsection to read:

14 "(j) The provisions of this section do not apply to public sales by sealed bid."

15 Section 26. G.S. 1-339.28(b) reads as rewritten:

16 "(b) No public sale of real property of a minor or incompetent originally ordered by
17 a clerk may be consummated until confirmed both by the clerk and by ~~the a~~ a resident
18 superior court judge of the district or the of, or a judge regularly holding the courts of of,
19 the district-district or set of districts as defined in G.S. 7A-41.1(a)."

20 Section 27. G.S. 1-339.28(c) reads as rewritten:

21 "(c) No public sale of real property sold at public auction may be confirmed until
22 the time for submitting an upset bid, pursuant to G.S. 1-339.25, has expired."

23 Section 28. G.S. 1-339.28 is amended by adding a new subsection to read:

24 "(e) No public sale of property sold by sealed bid shall be confirmed until the court
25 determines that the highest bid is an adequate price for the property sold and that sale to
26 the highest bidder is in the best interest of the person or estate for whom the property is
27 being sold. In so doing, the court may consider any of the following factors:

28 (1) The appraisals obtained by the person who conducted the sale;

29 (2) The number and amounts of the other bids received;

30 (3) Comparable sales of similar property within the relevant time period;

31 (4) Short-term market factors that depressed the price at the time of the
32 sale;

33 (5) The likelihood of significantly increasing the price through another sale;

34 (6) The additional cost of conducting another sale;

35 (7) The effect on the person or estate for whom the property is being sold of
36 the delay that would result from conducting another sale; and

37 (8) Any other factors in evidence that the court considers relevant."

38 Section 29. G.S. 1-339.30(a) reads as rewritten:

39 "(a) If an order of public sale by auction requires the highest bidder to make a cash
40 deposit at the sale, and he fails to make ~~such the~~ required deposit, the person holding the
41 sale shall at the same time and place again offer the property for sale."

42 Section 30. G.S. 1-339.30 is amended by adding a new subsection to read:

1 "(a1) If an order of public sale by sealed bid requires the highest bidder to make a
2 cash deposit and the bidder fails to make the required deposit within the time specified in
3 the order, the judge or clerk having jurisdiction may direct that the property be sold to the
4 person who submitted the next highest bid or may order a resale. The procedure for a
5 resale is the same in every respect as is provided by this Article in the case of an original
6 public sale."

7 Section 31. G.S. 1-339.30(d) reads as rewritten:

8 "(d) When the highest bidder at a public sale or resale of real property by auction
9 fails to comply with his bid within ten days after the tender to him of a deed for the
10 property or after a bona fide attempt to tender ~~such the~~ deed, the judge or clerk having
11 jurisdiction may order a resale. The procedure for ~~such a~~ resale of real property is the
12 same in every respect as is provided by this Article in the case of an original public sale
13 of real property except that the provisions of G.S. 1-339.27 (c), (d) and (e) apply with
14 respect to the posting and publishing of the notice of ~~such the~~ resale."

15 Section 32. G.S. 1-339.30 is amended by adding a new subsection to read:

16 "(d1) When the highest bidder at a public sale or resale by sealed bid fails to comply
17 with his bid within 10 days after the tender to him of a deed for the property or after a
18 bona fide attempt to tender a deed, the judge or clerk having jurisdiction may direct that
19 the property be sold to the person who submitted the next highest bid or may order a
20 resale. The procedure for a resale is the same in every respect as is provided by this
21 Article in the case of an original public sale."

22 Section 33. G.S. 1-339.30(e) reads as rewritten:

23 "(e) A defaulting bidder at any sale or resale is liable on his bid, and in case a resale
24 is had because of ~~such his~~ default, he shall remain liable to the extent that the final sale
25 price is less than his ~~bid plus bid,~~ and for all costs of ~~such the~~ resale or resales."

26 Section 34. This act becomes effective December 1, 1997, and applies to all
27 judicial sales ordered on or after that date.