

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 197
Committee Substitute Favorable 3/10/97
Senate Judiciary Committee Substitute Adopted 5/7/97

Short Title: Judicial Timber Sale/Sealed Bid.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A PROCEDURE FOR CONDUCTING JUDICIAL SALES
3 OF TIMBER BY SEALED BID, AS RECOMMENDED BY THE GENERAL
4 STATUTES COMMISSION.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 1-339.3A reads as rewritten:
7 **"§ 1-339.3A. Judge or clerk may order public or private sale.**

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

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

15 "(a) When an order of public sale directs the sales of separate tracts of
16 real property situated in different counties, exclusive jurisdiction over ~~such~~ the sale
17 remains in the superior or district court of the county where the proceeding, in which the
18 order of sale was issued, is pending, but there shall be a separate advertisement, sale and

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

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

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

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

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

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

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

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

- 36 (1) State the method by which the property shall be sold, pursuant to G.S.
37 1-339.9;
- 38 (2) Direct any posting of the notice of sale or any advertisement of the sale,
39 in addition to that required by G.S. 1-339.17 in the case of real property
40 or G.S. 1-339.18 in the case of personal property, which the judge or
41 clerk of the superior court deems ~~advantageous~~advantageous; ~~and~~
- 42 (3) Specify the number of appraisals to be obtained pursuant to G.S. 1-
43 339.13A."

1 Section 6. Part 2 of Article 29A of Chapter 1 of the General Statutes is
2 amended by adding a new section to read:

3 **"§ 1-339.13A. Public sale of timber by sealed bid; appraisal; bid procedure.**

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

6 (1) Obtain one or more appraisals of the timber to be sold;

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

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

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

13 (b) Each appraisal obtained pursuant to subsection (a) of this section shall be made
14 by a registered professional forester or other person qualified by training and experience
15 to appraise the timber to be sold. Copies of all appraisals obtained pursuant to this
16 section shall be included in the report required under G.S. 1-339.24. A person conducting
17 an appraisal pursuant to this section, including a partnership, corporation, company, or
18 other business of the appraiser, may not submit a bid on the timber which is the subject
19 of the appraisal. An appraisal conducted pursuant to this section shall remain confidential
20 until the appraisal is filed with the report of sale pursuant to G.S. 1-339.24. The contents
21 of the appraisal shall not be divulged by the appraiser to any person other than the person
22 holding the sale nor may the appraiser conduct an appraisal of the timber for any other
23 person until after the sale is confirmed.

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

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

33 **"§ 1-339.15. Public sale; contents of notice of sale.**

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

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

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

38 (2a) If the sale is to be a sale of timber by sealed bid, specify:

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

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

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

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

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

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

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

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

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

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

16 **"§ 1-339.17. Public sale; posting and publishing notice of sale of real property.**

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

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

21 (2) And in addition thereto,

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

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

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

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

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

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

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

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

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

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

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

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

14 "(a) A person authorized to hold a public sale by auction may postpone the sale to a
15 day certain not later than six days, exclusive of Sunday, after the original date for the sale
16 sale, and a person authorized to hold a public sale of timber by sealed bid may postpone
17 the time for submitting and opening bids to a date, time, and place certain not later than
18 six days, exclusive of Sunday, after the original date for the opening of bids:

19 (1) When there are no bidders, or

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

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

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

27 (5) When other good cause exists."

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

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

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

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

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

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

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

41 (1) State that the sale is postponed,

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

- 1 (2a) In the case of a sale of timber by sealed bid, state the date, time, and
2 place to which the opening of bids is postponed,
3 (3) State the reason for the postponement, and
4 (4) Be signed by the person authorized to hold the sale, or by his agent or
5 attorney."

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

7 "**§ 1-339.21. Public sale; sale by auction; time of sale.**

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

11 (b) No public sale by auction shall commence before 10:00 o'clock A.M. or after
12 4:00 o'clock P.M.

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

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

17 "**§ 1-339.22. Public sale; sale by auction; continuance of uncompleted sale.**

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

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

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

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

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

- 31 (1) The title of the action or proceeding;
32 (2) The authority under which the person making the sale acted;
33 (3) ~~The~~ If the sale was by public auction, the date, hour and place of the
34 sale;
35 (3a) If the sale was a sale of timber by sealed bid, the date, time, and place at
36 which the sealed bids were opened, the number of bids received, and the
37 amount of each bid;
38 (4) A description of real property sold, by reference or otherwise, sufficient
39 to identify it, and, if sold in parts, a description of each part so sold; and
40 (5) A description of personal property sold, sufficient to indicate the nature
41 and quantity of the property sold to each purchaser;
42 (6) The names of the purchasers;

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

3 (8) The date of the report."

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

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

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

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

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

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

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

26 **"§ 1-339.26. Public sale; sale by auction; separate upset bids when real property**
27 **sold in parts; subsequent procedure.**

28 When real property is sold at public sale by auction in parts, as provided by G.S. 1-
29 339.9, the sale, and each subsequent resale, of any ~~such~~ part shall be subject to a separate
30 upset bid; and, to the extent the judge or clerk of court having jurisdiction deems
31 advisable, the sale of each ~~such~~ part shall thereafter be treated as a separate sale for the
32 purpose of determining the procedure applicable thereto."

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

34 **"§ 1-339.27. Public sale; sale by auction; resale of real property; jurisdiction;**
35 **procedure."**

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

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

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

41 "(b) In any case in which a judge has jurisdiction of the original ~~sale~~public sale by
42 auction, he may provide by order that jurisdiction is retained for resale purposes, and in
43 ~~such~~that case when an upset bid is submitted, the judge having jurisdiction shall make

1 the order of resale. In all cases where the judge does not retain jurisdiction of a public
2 sale by auction for resale purposes, and in all cases where a public sale by auction is
3 originally ordered by a clerk, the clerk shall make the order of resale and shall have
4 jurisdiction of the proceeding for resale purposes. Whenever the original order of public
5 sale by auction is made by the judge, the terms of any resale ordered by the clerk shall be
6 consistent with terms of the original order, and the final order of confirmation shall be
7 made by the judge having jurisdiction of the proceeding."

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

9 "(c) Notice of any resale to be held because of an upset bid ~~shall~~ 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 fifteen 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 two successive weeks, but

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

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

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

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

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

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

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

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

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

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

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

39 (3) Comparable sales of similar timber within the relevant time period;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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