

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 394
Committee Substitute Favorable 4/7/03

Short Title: Clarify Legal Filing Law.

(Public)

Sponsors:

Referred to:

March 11, 2003

1 A BILL TO BE ENTITLED
2 AN ACT CLARIFYING THE LAW PERTAINING TO LEGAL DEADLINES
3 FALLING ON A HOLIDAY.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 103-5(a) reads as rewritten:

6 "(a) Where the day or the last day for doing ~~an any~~ act required or permitted by
7 law to be ~~done~~ performed in a public office or courthouse falls on ~~Sunday or a holiday~~
8 Sunday or legal holiday when the public office or courthouse is closed for transactions,
9 the act may be ~~done~~ performed on the next ~~succeeding secular or business day~~ that the
10 public office or courthouse is open for transactions, and where the courthouse in any
11 county is closed on Saturday or any other day by order of the board of county
12 commissioners of said county and the day or the last day required for filing an advance
13 bid or the filing of any pleading or written instrument of any kind with any officer
14 having an office in the courthouse, or the performance of any act required or permitted
15 to be done in said courthouse falls on Saturday or other day during which said
16 courthouse is closed as aforesaid, then said Saturday or other day during which said
17 courthouse is closed as aforesaid shall be deemed a holiday; and said advance bid,
18 pleading or other written instrument may be filed, and any act required or permitted to
19 be done in the courthouse may be done on the next day during which the courthouse is
20 open for business."

21 **SECTION 2.** G.S. 1A-1, Rule 6(a) reads as rewritten:

22 "(a) Computation. – In computing any period of time prescribed or allowed by
23 these rules, by order of court, or by any applicable statute, including rules, orders or
24 statutes respecting publication of notices, the day of the act, event, default or publication
25 after which the designated period of time begins to run is not to be included. The last
26 day of the period so computed is to be included, unless it is a Saturday, Sunday or a
27 legal holiday, holiday when the courthouse is closed for transactions, in which event the
28 period runs until the end of the next day which is not a Saturday, Sunday, or a legal
29 holiday, holiday when the courthouse is closed for transactions. When the period of

1 time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays,
2 and holidays shall be excluded in the computation. A half holiday shall be considered as
3 other days and not as a holiday."

4 **SECTION 3.** G.S. 45-21.21(e) reads as rewritten:

5 "(e) A sale may be postponed more than once provided the final postponed sale
6 date is not later than 90 days, exclusive of Sunday and legal ~~holidays~~, holidays when the
7 courthouse is closed for transactions, after the original date for the sale."

8 **SECTION 4.** G.S. 45-21.23 reads as rewritten:

9 **"§ 45-21.23. Time of sale.**

10 A sale shall begin at the time designated in the notice of sale or as soon thereafter as
11 practicable, but not later than one hour after the time fixed therefor unless it is delayed
12 by other sales held at the same place. The sale shall be held between the hours of 10:00
13 A.M. and 4:00 P.M. on any day other than Sunday or a legal ~~holiday~~, holiday when the
14 courthouse is closed for transactions."

15 **SECTION 5.** G.S. 45-21.24 reads as rewritten:

16 **"§ 45-21.24. Continuance of uncompleted sale.**

17 A sale commenced but not completed within the time allowed by G.S. 45-21.23 shall
18 be continued by the person holding the sale to a designated time between 10:00 o'clock
19 A.M. and 4:00 o'clock P.M. the next following day, other than Sunday or a legal
20 ~~holiday~~, holiday when the courthouse is closed for transactions. In case such
21 continuance becomes necessary, the person holding the sale shall publicly announce the
22 time to which the sale is continued."

23 **SECTION 6.** G.S. 45-21.27(a) reads as rewritten:

24 "(a) An upset bid is an advanced, increased, or raised bid whereby any person
25 offers to purchase real property theretofore sold, for an amount exceeding the reported
26 sale price or last upset bid by a minimum of five percent (5%) thereof, but in any event
27 with a minimum increase of seven hundred fifty dollars (\$750.00). Subject to the
28 provisions of subsection (b) of this section, an upset bid shall be made by delivering to
29 the clerk of superior court, with whom the report of sale or last notice of upset bid was
30 filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in
31 an amount greater than or equal to five percent (5%) of the amount of the upset bid but
32 in no event less than seven hundred fifty dollars (\$750.00). The deposit required by this
33 section shall be filed with the clerk of the superior court, with whom the report of the
34 sale or the last notice of upset bid was filed by the close of normal business hours on the
35 tenth day after the filing of the report of the sale or the last notice of upset bid, and if the
36 tenth day shall fall upon a Sunday or legal ~~holiday~~, holiday when the courthouse is
37 closed for transactions, or upon a day in which the office of the clerk is not open for the
38 regular dispatch of its business, the deposit may be made and the notice of upset bid
39 filed on the day following when said office is open for the regular dispatch of its
40 business. Subject to the provisions of G.S. 45-21.30, there shall be no resales; rather,
41 there may be successive upset bids each of which shall be followed by a period of 10
42 days for a further upset bid. When an upset bid is not filed following a sale, resale, or
43 prior upset bid within the time specified, the rights of the parties to the sale or resale
44 become fixed."

1 **SECTION 7.** G.S. 1-339.64(a) reads as rewritten:

2 "(a) An upset bid is an advanced, increased, or raised bid whereby a person offers
3 to purchase real property theretofore sold for an amount exceeding the reported sale
4 price or last upset bid by a minimum of five percent (5%) thereof, but in any event with
5 a minimum increase of seven hundred fifty dollars (\$750.00). Subject to the provisions
6 of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of
7 superior court, with whom the report of sale or the last notice of upset bid was filed, a
8 deposit in cash or by certified check or cashier's check satisfactory to the clerk in an
9 amount greater than or equal to five percent (5%) of the amount of the upset bid but in
10 no event less than seven hundred fifty dollars (\$750.00). The deposit required by this
11 section shall be filed with the clerk of the superior court, with whom the report of sale
12 or the last notice of upset bid was filed, by the close of normal business hours on the
13 tenth day after the filing of the report of sale or the last notice of upset bid and if the
14 tenth day falls upon a Sunday or legal holiday when the courthouse is closed for
15 transactions, or upon a day in which the office of the clerk is not open for the regular
16 dispatch of its business, the deposit may be made and the notice of upset bid may be
17 filed on the day following when the office is open for the regular dispatch of its
18 business. Except as provided in G.S. 1-339.66A and G.S. 1-339.69, there shall be no
19 resales; however, there may be successive upset bids, each of which shall be followed
20 by a period of 10 days for a further upset bid. If a timely motion for resale is filed under
21 G.S. 1-339.66A, no upset bids may be filed while the motion is pending."

22 **SECTION 8.** G.S. 1-339.25(a) reads as rewritten:

23 "(a) An upset bid is an advanced, increased, or raised bid in a public sale by
24 auction whereby a person offers to purchase real property theretofore sold for an
25 amount exceeding the reported sale price or the last upset bid by a minimum of five
26 percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty
27 dollars (\$750.00). Subject to the provisions of subsection (b) of this section, an upset
28 bid shall be made by delivering to the clerk of superior court, with whom the report of
29 the sale or the last notice of upset bid was filed, a deposit in cash or by certified check
30 or cashier's check satisfactory to the clerk in an amount greater than or equal to five
31 percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty
32 dollars (\$750.00). The deposit required by this section shall be filed with the clerk of the
33 superior court with whom the report of sale or the last notice of upset bid was filed, by
34 the close of normal business hours on the tenth day after the filing of the report of sale
35 or the last notice of upset bid, and if the tenth day falls upon a Sunday or legal holiday
36 when the courthouse is closed for transactions, or upon a day in which the office of the
37 clerk is not open for the regular dispatch of its business, the deposit may be made and
38 the notice of upset bid may be filed on the day following when the office is open for the
39 regular dispatch of its business. Except as provided in G.S. 1-339.27A and G.S.
40 1-339.30, there shall be no resales; however, there may be successive upset bids, each of
41 which shall be followed by a period of 10 days for a further upset bid. If a timely
42 motion for resale is filed under G.S. 1-339.27A, no upset bids may be filed while the
43 motion is pending."

44 **SECTION 9.** G.S. 7B-506(e) reads as rewritten:

1 "(e) If the court orders at the hearing required in subsection (a) of this section that
2 the juvenile remain in custody, a subsequent hearing on continued custody shall be held
3 within seven business days of that hearing, excluding Saturdays, Sundays, and legal
4 ~~holidays,~~ holidays when the courthouse is closed for transactions, and pending a
5 hearing on the merits, hearings thereafter shall be held at intervals of no more than 30
6 calendar days."

7 **SECTION 10.** G.S. 7B-1906(b) reads as rewritten:

8 "(b) As long as the juvenile remains in secure or nonsecure custody, further
9 hearings to determine the need for continued secure custody shall be held at intervals of
10 no more than 10 calendar days. A subsequent hearing on continued nonsecure custody
11 shall be held within seven business days, excluding Saturdays, Sundays, and legal
12 ~~holidays,~~ holidays when the courthouse is closed for transactions, of the initial hearing
13 required in subsection (a) of this section and hearings thereafter shall be held at intervals
14 of no more than 30 calendar days. In the case of a juvenile alleged to be delinquent,
15 further hearings may be waived only with the consent of the juvenile, through counsel
16 for the juvenile."

17 **SECTION 11.** G.S. 105-374(m) reads as rewritten:

18 "(m) Sale. – The sale shall be by public auction to the highest bidder and shall, in
19 accordance with the judgment, be held at the courthouse door on any day of the week
20 except a Sunday or legal ~~holiday.~~ holiday when the courthouse is closed for
21 transactions. (In actions brought by a municipality that is not a county seat, the court
22 may, in its discretion, direct that the sale be held at the city or town hall door.) The
23 commissioner conducting the sale may, in his discretion, require from any successful
24 bidder a deposit equal to not more than twenty percent (20%) of his bid, which deposit,
25 in the event that the bidder refuses to take title and a resale becomes necessary, shall be
26 applied to pay the costs of sale and any loss resulting. (However, this provision shall not
27 deprive the commissioner of his right to sue for specific performance of the contract.)
28 No deposit shall be required of a taxing unit that has made the highest bid at the
29 foreclosure sale."

30 **SECTION 12.** G.S. 156-105 reads as rewritten:

31 "**§ 156-105. Assessment lien; collection; sale of land.**

32 The assessments shall constitute a first and paramount lien, second only to State and
33 county taxes, upon the lands assessed for the payment of the bonds and interest thereon
34 as they become due, and shall be collected in the same manner and by the same officers
35 as the State and county taxes are collected. The assessments shall be due and payable on
36 the first Monday in September each year, and if the same shall not be paid in full by the
37 thirty-first day of December following, it shall be the duty of the sheriff or tax collector
38 to sell the lands so delinquent. The sale of lands for failure to pay such assessments
39 shall be made at the courthouse door of the county in which the lands are situated,
40 between the hours of 10 o'clock in the forenoon and four o'clock in the afternoon of any
41 date except Sunday or another legal ~~holiday,~~ holiday when the courthouse is closed for
42 transactions, which may be designated by the board of drainage commissioners. After
43 any such sale date has been designated by the board of drainage commissioners, if for
44 any necessary cause the sale cannot be made on that date, the sale may be continued

1 from day to day for not exceeding four days, or the lands may be readvertised and sold
2 on any day which the board of drainage commissioners may or shall designate during
3 the same hours and without any order being obtained therefor during the same calendar
4 year. Nothing in this section shall be construed to require any order from any court for
5 any sale or resale held hereunder. The existing general tax law in force when sales are
6 made for delinquent assessments shall have application in redeeming lands so sold; and
7 in all other respects, except as herein or otherwise modified or amended, the existing
8 law as to the collection of State and county taxes shall apply to the collection of such
9 drainage assessments. No bid at any sale shall be received unless sufficient in amount to
10 discharge all the drainage assessments and other charges due by the delinquent lands or
11 owner thereof, together with all costs and expenses of sale. If no sufficient bid be
12 received, the board of drainage commissioners of the district shall be deemed the
13 purchaser in its corporate capacity at a sum sufficient to pay all assessments which are
14 due and costs as above stated, and shall be entitled to receive a certificate of purchase
15 and deed in the manner provided by law for purchasers at tax sales. The board of
16 drainage commissioners shall only be required to pay to the sheriff the costs and
17 expenses of sale before receiving a certificate of purchase. The board of drainage
18 commissioners of the district in their corporate capacity shall be in like position and
19 have the same rights and be subject to the same duties as the purchaser of lands at any
20 tax sale under the general law. If the board of drainage commissioners shall have been
21 the purchaser of lands so sold, the amount paid in redemption by the owner, or any
22 person having an estate therein or lien thereon, shall include the sum bid therefor plus
23 the penalty. The board of drainage commissioners shall pay to the sheriff or tax
24 collector the amount representing their bid at the sale of said lands before they shall be
25 entitled to receive a deed therefor, which the sheriff shall pay to the treasurer of the
26 drainage district in the same manner as other funds received by him. The board of
27 drainage commissioners, after acquiring a deed for said lands, may hold the same as an
28 asset of the district, and shall be liable for the payment of all drainage assessments and
29 State and county taxes accruing after the sale at which the district was a bidder, and in
30 all respects be deemed the owner of said lands and subject to the same privileges and
31 liabilities as any other landowner, including the right to convey the said lands for a
32 consideration and pay the proceeds of said sale to the treasurer of the district, which
33 may be distributed by the drainage commissioners for the benefit of the district in the
34 same manner as other district funds.

35 If any sheriff or tax collector failed for any reason to collect drainage assessments
36 upon lands in any drainage districts due in 1917, or any subsequent years, and further
37 failed to make valid sales of the lands so delinquent in the payment of such assessments,
38 then and in such event the existing sheriff or tax collector is hereby authorized and
39 directed to proceed to collect such unpaid drainage assessments, with interest thereon
40 from the dates when such assessments respectively became due, and in default of
41 payment being made he is further authorized to make sales of such lands as may be in
42 default at any time hereafter, at the times and in the manner authorized by law as
43 amended herein; and the purchaser at said sales shall acquire title to such lands in the
44 manner provided by law. If the sheriff or tax collector in office at the time such

1 assessments were in default has since died or gone out of office, the powers herein
2 given shall be exercised by the existing sheriff or tax collector.

3 The 1931 amendment to this section shall have the same force and effect from and
4 after April 13, 1931, as if it had been ratified and enacted prior to the first day of
5 January, 1929, and no sale of drainage lands held under the provisions of section 5361
6 shall be deemed or declared void by reason of the fact that they may not have been held
7 on the day specified in section 5361 of the Consolidated Statutes prior to this
8 amendment."

9 **SECTION 13.** This act becomes effective October 1, 2003, and applies to
10 any act required or permitted by law to be done on or after that date.