

§ 146-9. Disposition of mineral deposits in State lands not under water.

(a) The Department of Administration may sell, lease, or otherwise dispose of mineral rights or deposits in the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, not lying beneath the waters of the State, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every instrument conveying such rights shall be executed in the manner required of deeds by G.S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein provided, or by the agency designated by the Governor and Council of State to approve conveyances of such rights. The net proceeds of dispositions of all such mineral rights or deposits shall be paid into the State Literary Fund.

(b) Notwithstanding subsection (a) of this section, or any other provision of law, prior to expiration of a lease of mineral deposits in State lands, the Department of Administration or other entity designated by the Department shall solicit competitive bids for lease of such mineral deposits, which shall include a process for upset bids as described in this subsection. An upset bid is an increased or raised bid whereby a person offers to lease such mineral rights for an amount exceeding the highest bid received in response to the initial solicitation for competitive bids, or the last upset bid, as applicable, by a minimum of five percent (5%). The process shall provide that the Department or other designated entity that issued the solicitation for competitive bids shall issue a notice of high bid to the person submitting the highest bid in response to the initial solicitation for competitive bids, or the person submitting the last upset bid, as applicable, and any other bidders that have submitted a bid in an amount seventy-five percent (75%) or more of the highest bid received in response to the initial solicitation for competitive bids, or the last upset bid, as applicable, of the highest bid received at that point within 10 days of the closure of the bidding period, as provided in the solicitation for competitive bids, through notice delivered by any means authorized under G.S. 1A-1, Rule 4. Thereafter, an upset bid may be made by delivering to the Department or other designated entity, subject to all of the following requirements and conditions:

- (1) With a deposit in cash, certified check, or cashier's check in an amount greater than or equal to five percent (5%) of the amount of the highest bid received in response to the initial solicitation for competitive bids, or the last upset bid, as applicable. The deposit required by this section shall be filed by the close of normal business hours on the tenth day after issuance of the Department or other designated entity's notice of high bid. If the tenth day falls upon a weekend or legal holiday, the deposit may be made and the notice of upset bid may be filed on the first business day following that day. There may be successive upset bids, each of which shall be followed by a period of 10 days for a further upset bid.
- (2) The Department or other designated entity may require an upset bidder to deposit a cash bond, or, in lieu thereof at the option of the bidder, a surety bond, approved by the Department or other designated entity. The compliance bond shall be in an amount the Department or other designated entity deems adequate, but in no case greater than the amount of the bid of the person being required to furnish the bond, less the amount of any required deposit. The compliance bond shall be payable to the State of North Carolina and shall be conditioned on the principal obligor's compliance with the bid.
- (3) At the time that an upset bid is submitted pursuant to this subsection, together with a compliance bond if one is required, the upset bidder shall file

a notice of upset bid with the Department or other designated entity. The notice of upset bid shall include all of the following:

- a. State the name, address, and telephone number of the upset bidder.
 - b. Specify the amount of the upset bid.
 - c. Provide that the lease shall remain open for a period of 10 days after the date on which the notice of upset bid is filed for the filing of additional upset bids as permitted by law.
 - d. Be signed by the upset bidder or the attorney or the agent of the upset bidder.
- (4) When an upset bid is made as provided in this subsection, the Department or other designated entity shall notify the highest prior bidder, and any other bidders that have submitted a bid in an amount seventy-five percent (75%) or more of the current high bid received in response to the initial solicitation for competitive bids, or the last upset bid, as applicable.
- (5) When an upset bid is made as provided in this subsection, the last prior bidder is released from any further obligation on account of the bid, and any deposit or bond provided by the last prior bidder shall be released.
- (6) Any person offering to lease mineral deposits in State lands by upset bid as permitted in this subsection is subject to and bound by the terms of the original notice of lease.

(c) The Department of Administration shall require that any lessee of mineral deposits in State lands diligently conduct continuous mining operations for minerals subject to the lease throughout the entire term of the lease.

(d) The Department of Administration shall adopt rules to implement subsection (c) of this section. (1959, c. 683, s. 1; 2015-276, s. 5; 2017-102, s. 27.)