

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Originating

Senate Bill 296

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PLYMALE, PREZIOSO, AND STOLLINGS

[Originating in the Committee on Finance;

Reported on January 16, 2018]

1 A BILL to amend and reenact §5A-3-45 of the Code of West Virginia, 1931, as amended, relating
2 to the sale or transfer of surplus property; and allowing spending units to designate the
3 fund into which proceeds from the sale or transfer of surplus property shall be deposited
4 if the fund that was used to purchase the property no longer exists.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

**§5A-3-45. Disposition of surplus state property; semiannual report; application of
proceeds from sale.**

1 (a) The State Agency for Surplus Property has the exclusive power and authority to make
2 disposition of commodities or expendable commodities now owned or in the future acquired by
3 the state when the commodities are or become obsolete or unusable or are not being used or
4 should be replaced.

5 (b) The agency shall determine what commodities or expendable commodities should be
6 disposed of and make disposition in the manner which will be most advantageous to the state.

7 The disposition may include:

8 (1) Transferring the particular commodities or expendable commodities between
9 departments;

10 (2) Selling the commodities to county commissions, county boards of education,
11 municipalities, public service districts, county building commissions, airport authorities, parks and
12 recreation commissions, nonprofit domestic corporations qualified as tax exempt under Section
13 501(c)(3) of the Internal Revenue Code of 1986, as amended, or volunteer fire departments in
14 this state when the volunteer fire departments have been held exempt from taxation under Section
15 501(c) of the Internal Revenue Code;

16 (3) Trading in the commodities as a part payment on the purchase of new commodities;

17 (4) Cannibalizing the commodities pursuant to procedures established under subsection
18 (g) of this section;

19 (5) Properly disposing of the commodities as waste;

20 (6) Selling the commodities to the general public at the posted price or to the highest
21 bidder by means of public auctions or sealed bids, after having first advertised the time, terms,
22 and place of the sale as a Class II legal advertisement in compliance with the provisions of §59-3-1
23 *et seq.* of this code. The publication area for the publication is the county in which the sale is to
24 be conducted. The sale may also be advertised in other advertising media that the agency
25 considers advisable. The agency may sell to the highest bidder or to any one or more of the
26 highest bidders, if there is more than one, or, if the best interest of the state will be served, reject
27 all bids; or

28 (7) Selling the commodities to the highest bidder by means of an Internet auction site
29 approved by the director, as set forth in an emergency rule pursuant to the provisions of
30 chapter 29A of this code.

31 (c) Upon the sale to the general public or transfer of commodities or expendable
32 commodities between departments, or upon the sale of commodities or expendable commodities
33 to an eligible organization, the agency shall set the price to be paid by the receiving eligible
34 organization, with due consideration given to current market prices.

35 (d) The agency may sell expendable, obsolete or unused motor vehicles owned by the
36 state to an eligible organization, other than volunteer fire departments. In addition, the agency
37 may sell expendable, obsolete or unused motor vehicles owned by the state with a gross weight
38 in excess of 4,000 pounds to an eligible volunteer fire department. The agency, with due
39 consideration given to current market prices, shall set the price to be paid by the receiving eligible
40 organization for motor vehicles sold pursuant to this provision: *Provided*, That the sale price of
41 any motor vehicle sold to an eligible organization may not be less than the "average loan" value,
42 as published in the most recent available eastern edition of the National Automobile Dealer's
43 Association (N.A.D.A.) Official Used Car Guide, if the value is available, unless the fair market
44 value of the vehicle is less than the N.A.D.A. "average loan" value, in which case the vehicle may

45 be sold for less than the "average loan" value. The fair market value shall be based on a thorough
46 inspection of the vehicle by an employee of the agency who shall consider the mileage of the
47 vehicle and the condition of the body, engine, and tires as indicators of its fair market value. If no
48 fair market value is available, the agency shall set the price to be paid by the receiving eligible
49 organization with due consideration given to current market prices. The duly authorized
50 representative of the eligible organization, for whom the motor vehicle or other similar surplus
51 equipment is purchased or otherwise obtained, shall cause ownership and proper title to the motor
52 vehicle to be vested only in the official name of the authorized governing body for whom the
53 purchase or transfer was made. The ownership or title, or both, shall remain in the possession of
54 that governing body and be nontransferable for a period of not less than one year from the date
55 of the purchase or transfer. Resale or transfer of ownership of the motor vehicle or equipment
56 prior to an elapsed period of one year may be made only by reason of certified unserviceability.

57 (e) The agency shall report to the Legislative Auditor, semiannually, all sales of
58 commodities or expendable commodities made during the preceding six months to eligible
59 organizations. The report shall include a description of the commodities sold, the price paid by
60 the eligible organization which received the commodities and to whom each commodity was sold.

61 (f) The proceeds of the sales or transfers shall be deposited in the State Treasury to the
62 credit on a pro rata basis of the fund or funds out of which the purchase of the particular
63 commodities or expendable commodities was made: *Provided, That ~~the~~ if the fund or funds from*
64 which the purchase of the commodities was made no longer exists at the time of liquidation, the
65 spending unit relinquishing the commodities may designate an alternate fund into which the
66 proceeds shall be deposited. The agency may charge and assess fees reasonably related to the
67 costs of care and handling with respect to the transfer, warehousing, sale, and distribution of state
68 property disposed of or sold pursuant to the provisions of this section.

69 (g)(1) For purposes of this section, "cannibalization" means the removal of parts from one
70 commodity to use in the creation or repair of another commodity.

71 (2) The Director of the Purchasing Division shall propose for promulgation legislative rules
72 to establish procedures that permit the cannibalization of a commodity when it is in the best
73 interests of the state. The procedures shall require the approval of the director prior to the
74 cannibalization of the commodity under such circumstances as the procedures may prescribe.

75 (3)(A) Under circumstances prescribed by the procedures, state agencies shall be
76 required to submit a form, in writing or electronically, that, at a minimum, elicits the following
77 information for the commodity the agency is requesting to cannibalize: (i) The commodity
78 identification number; (ii) the commodity's acquisition date; (iii) the commodity's acquisition cost;
79 (iv) a description of the commodity; (v) whether the commodity is operable and, if so, how well it
80 operates; (vi) how the agency will dispose of the remaining parts of the commodity; and (vii) who
81 will cannibalize the commodity and how the person is qualified to remove and reinstall the parts.

82 (B) If the agency has immediate plans to use the cannibalized parts, the form shall elicit
83 the following information for the commodity or commodities that will receive the cannibalized part
84 or parts: (i) The commodity identification number; (ii) the commodity's acquisition date; (iii) the
85 commodity's acquisition cost; (iv) a description of the commodity; (v) whether the commodity is
86 operable; (vi) whether the part restores the commodity to an operable condition; and (vii) the cost
87 of the parts and labor to restore the commodity to an operable condition without cannibalization.

88 (C) If the agency intends to retain the cannibalized parts for future use, it shall provide
89 information justifying its request.

90 (D) The procedures shall provide for the disposal of the residual components of
91 cannibalized property.

92 (h)(1) The Director of the Purchasing Division shall propose for promulgation legislative
93 rules to establish procedures that allow state agencies to dispose of commodities in a landfill, or
94 by other lawful means of waste disposal, if the value of the commodity is less than the benefit that
95 may be realized by the state by disposing of the commodity using another method authorized in
96 this section. The procedures shall specify circumstances where the state agency for surplus

97 property shall inspect the condition of the commodity prior to authorizing the disposal and those
98 circumstances when the inspection is not necessary prior to the authorization.

99 (2) Whenever a state agency requests permission to dispose of a commodity in a landfill,
100 or by other lawful means of waste disposal, the state agency for surplus property has the right to
101 take possession of the commodity and to dispose of the commodity using any other method
102 authorized in this section.

103 (3) If the state agency for surplus property determines, within 15 days of receiving a
104 commodity, that disposing of the commodity in a landfill or by other lawful means of waste disposal
105 would be more beneficial to the state than disposing of the commodity using any other method
106 authorized in this section, the cost of the disposal is the responsibility of the agency from which it
107 received the commodity.

NOTE: The purpose of this bill is to allow spending units to designate the fund into which the proceeds from the sale of surplus property must be deposited when the fund that was used to purchase the property is no longer in existence.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.