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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2005

ENROLLED

SENATE BILL NO. 728

(By Senator Bowman)

PASSED April 9, 2005

In Effect 90 days from Passage

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Senate Bill No. 728

(BY SENATOR BOWMAN)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §5A-3-45 of the Code of West Virginia, 1931, as amended, relating to the disposition of state surplus property generally; allowing cannibalization of commodities under certain circumstances; allowing the disposing of commodities as waste under certain circumstances; providing for procedures by legislative rules; defining cannibalization; allowing the state agency for surplus property to take possession of a commodity in certain circumstances and dispose of the commodity using any method authorized in the section; and providing that the cost of disposal in certain circumstances is the responsibility of the agency from which the state agency for surplus property received the commodity.

Be it enacted by the Legislature of West Virginia:

That §5A-3-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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 exclu-
2 sive power and authority to make disposition of commodi-
3 ties or expendable commodities now owned or in the
4 future acquired by the state when the commodities are or
5 become obsolete or unusable or are not being used or
6 should be replaced.

7 (b) The agency shall determine what commodities or
8 expendable commodities should be disposed of and make
9 disposition in the manner which will be most advanta-
10 geous to the state. The disposition may include:

11 (1) Transferring the particular commodities or expend-
12 able commodities between departments;

13 (2) Selling the commodities to county commissions,
14 county boards of education, municipalities, public service
15 districts, county building commissions, airport authorities,
16 parks and recreation commissions, nonprofit domestic
17 corporations qualified as tax exempt under Section
18 501(c)(3) of the Internal Revenue Code of 1986, as
19 amended, or volunteer fire departments in this state when
20 the volunteer fire departments have been held exempt
21 from taxation under Section 501(c) of the Internal Revenue
22 Code;

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

25 (4) Cannibalizing the commodities pursuant to proce-
26 dures established under subsection (g) of this section;

27 (5) Properly disposing of the commodities as waste; or

28 (6) Selling the commodities to the highest bidder by
29 means of public auctions or sealed bids, after having first
30 advertised the time, terms and place of the sale as a Class
31 II legal advertisement in compliance with the provisions of
32 article three, chapter fifty-nine of this code. The publica-

33 tion area for the publication is the county in which the sale
34 is to be conducted. The sale may also be advertised in
35 other advertising media that the agency considers advis-
36 able. The agency may sell to the highest bidder or to any
37 one or more of the highest bidders, if there is more than
38 one, or, if the best interest of the state will be served, reject
39 all bids.

40 (c) Upon the transfer of commodities or expendable
41 commodities between departments, or upon the sale of
42 commodities or expendable commodities to an eligible
43 organization, the agency shall set the price to be paid by
44 the receiving eligible organization, with due consideration
45 given to current market prices.

46 (d) The agency may sell expendable, obsolete or unused
47 motor vehicles owned by the state to an eligible organiza-
48 tion, other than volunteer fire departments. In addition,
49 the agency may sell expendable, obsolete or unused motor
50 vehicles owned by the state with a gross weight in excess
51 of four thousand pounds to an eligible volunteer fire
52 department. The agency, with due consideration given to
53 current market prices, shall set the price to be paid by the
54 receiving eligible organization for motor vehicles sold
55 pursuant to this provision: *Provided*, That the sale price
56 of any motor vehicle sold to an eligible organization may
57 not be less than the "average loan" value, as published in
58 the most recent available eastern edition of the National
59 Automobile Dealer's Association (N. A. D. A.) Official
60 Used Car Guide, if the value is available, unless the fair
61 market value of the vehicle is less than the N. A. D. A.
62 "average loan" value, in which case the vehicle may be
63 sold for less than the "average loan" value. The fair
64 market value shall be based on a thorough inspection of
65 the vehicle by an employee of the agency who shall
66 consider the mileage of the vehicle and the condition of the
67 body, engine and tires as indicators of its fair market
68 value. If no fair market value is available, the agency shall
69 set the price to be paid by the receiving eligible organiza-

70 tion with due consideration given to current market prices.
71 The duly authorized representative of the eligible organi-
72 zation, for whom the motor vehicle or other similar surplus
73 equipment is purchased or otherwise obtained, shall cause
74 ownership and proper title to the motor vehicle to be
75 vested only in the official name of the authorized govern-
76 ing body for whom the purchase or transfer was made.
77 The ownership or title, or both, shall remain in the posses-
78 sion of that governing body and be nontransferable for a
79 period of not less than one year from the date of the
80 purchase or transfer. Resale or transfer of ownership of
81 the motor vehicle or equipment prior to an elapsed period
82 of one year may be made only by reason of certified
83 unserviceability.

84 (e) The agency shall report to the Legislative Auditor,
85 semiannually, all sales of commodities or expendable
86 commodities made during the preceding six months to
87 eligible organizations. The report shall include a descrip-
88 tion of the commodities sold, the price paid by the eligible
89 organization which received the commodities and to whom
90 each commodity was sold.

91 (f) The proceeds of the sales or transfers shall be depos-
92 ited in the State Treasury to the credit on a pro rata basis
93 of the fund or funds out of which the purchase of the
94 particular commodities or expendable commodities was
95 made: *Provided*, That the agency may charge and assess
96 fees reasonably related to the costs of care and handling
97 with respect to the transfer, warehousing, sale and distri-
98 bution of state property disposed of or sold pursuant to the
99 provisions of this section.

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

103 (2) The Director of the Purchasing Division shall propose
104 for promulgation legislative rules to establish procedures
105 that permit the cannibalization of a commodity when it is

106 in the best interests of the state. The procedures shall
107 require the approval of the Director prior to the cannibal-
108 ization of the commodity under such circumstances as the
109 procedures may prescribe.

110 (3)(A) Under circumstances prescribed by the proce-
111 dures, state agencies shall be required to submit a form, in
112 writing or electronically, that, at a minimum, elicits the
113 following information for the commodity the agency is
114 requesting to cannibalize:

115 (i) The commodity identification number;

116 (ii) The commodity's acquisition date;

117 (iii) The commodity's acquisition cost;

118 (iv) A description of the commodity;

119 (v) Whether the commodity is operable and, if so, how
120 well it operates;

121 (vi) How the agency will dispose of the remaining parts
122 of the commodity; and

123 (vii) Who will cannibalize the commodity and how the
124 person is qualified to remove and reinstall the parts.

125 (B) If the agency has immediate plans to use the canni-
126 balized parts, the form shall elicit the following informa-
127 tion for the commodity or commodities that will receive
128 the cannibalized part or parts:

129 (i) The commodity identification number;

130 (ii) The commodity's acquisition date;

131 (iii) The commodity's acquisition cost;

132 (iv) A description of the commodity;

133 (v) Whether the commodity is operable;

134 (vi) Whether the part restores the commodity to an
135 operable condition; and

136 (vii) The cost of the parts and labor to restore the
137 commodity to an operable condition without cannibaliza-
138 tion.

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

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

144 (h)(1) The Director of the Purchasing Division shall
145 propose for promulgation legislative rules to establish
146 procedures that allow state agencies to dispose of com-
147 modities in a landfill, or by other lawful means of waste
148 disposal, if the value of the commodity is less than the
149 benefit that may be realized by the state by disposing of
150 the commodity using another method authorized in this
151 section. The procedures shall specify circumstances where
152 the state agency for surplus property shall inspect the
153 condition of the commodity prior to authorizing the
154 disposal and those circumstances when the inspection is
155 not necessary prior to the authorization.

156 (2) Whenever a state agency requests permission to
157 dispose of a commodity in a landfill, or by other lawful
158 means of waste disposal, the state agency for surplus
159 property has the right to take possession of the commodity
160 and to dispose of the commodity using any other method
161 authorized in this section.

162 (3) If the state agency for surplus property determines,
163 within fifteen days of receiving a commodity, that dispos-
164 ing of the commodity in a landfill or by other lawful
165 means of waste disposal would be more beneficial to the
166 state than disposing of the commodity using any other
167 method authorized in this section, the cost of the disposal

168 is the responsibility of the agency from which it received
169 the commodity.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy White
.....
Chairman Senate Committee

D. Luke Bracy
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell Holmes
.....
Clerk of the Senate

Bracy, D. Luke
.....
Clerk of the House of Delegates

Carl Ray Boudin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within is approved..... this the *2nd*
Day of *May*....., 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 29 2005

Time 9:45 am