WEST VIRGINIA CODE: §5a-3-45

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

(a) The State agency for surplus property has the exclusive power and authority to make disposition of commodities or expendable commodities now owned or in the future acquired by the State when the commodities are or become obsolete or unusable or are not being used or should be replaced: *Provided*, That the director may grant authority to spending units to make disposition of commodities or expendable commodities in appropriate circumstances when determined by the director to be in the State's best interest.

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

(1) Transferring the particular commodities or expendable commodities between departments, after consultation with any relevant spending units, and recording the transfer in accordance with governmental accounting standards;

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

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

(4) Cannibalizing the commodities pursuant to procedures established under §5A-3-45(g) of this code;

(5) Properly disposing of the commodities as waste;

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

(7) Selling the commodities to the highest bidder by means of an internet auction site

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approved by the director, as set forth in a legislative rule pursuant to the provisions of §29A-3-1 *et seq*. of this code.

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

(d) The agency may sell expendable, obsolete, or unused motor vehicles owned by the state to an eligible organization, other than volunteer fire departments. In addition, the agency may sell expendable, obsolete, or unused motor vehicles owned by the state with a gross weight in excess of 4,000 pounds to an eligible volunteer fire department. The agency, with due consideration given to fair market value as determined by an independent automotive pricing guide, shall set the price at a fair market price to be paid by the receiving eligible organization for motor vehicles sold pursuant to this provision. The fair market value shall be based on a thorough inspection of the vehicle by an employee of the agency who shall consider the mileage of the vehicle and the condition of the body, engine, and tires as indicators of its fair market value. If no fair market value is available, the agency shall set the price to be paid by the receiving eligible organization with due consideration given to current market prices. The duly authorized representative of the eligible organization, for whom the motor vehicle or other similar surplus equipment is purchased or otherwise obtained, shall cause ownership and proper title to the motor vehicle to be vested only in the official name of the authorized governing body for whom the purchase or transfer was made. The ownership or title, or both, shall remain in the possession of that governing body and be nontransferable for a period of not less than one year from the date of the purchase or transfer. Resale or transfer of ownership of the motor vehicle or equipment prior to an elapsed period of one year may be made only by reason of certified unserviceability.

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

(f) The proceeds of the sales or transfers shall be deposited in the State Treasury to the credit on a pro rata basis of the fund or funds out of which the purchase of the particular commodities or expendable commodities was made: *Provided*, That the agency may charge and assess fees reasonably related to the costs of care and handling with respect to the transfer, warehousing, sale, and distribution of state property disposed of or sold pursuant to the provisions of this section. Notwithstanding §5A-3-45(e) of this code, if the fund or funds out of which the purchase was made no longer exist, the spending unit may designate an alternate fund within which the proceeds must be deposited.

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

(2) The Director of the Purchasing Division shall propose for promulgation legislative rules

to establish procedures that permit the cannibalization of a commodity when it is in the best interests of the state. The procedures shall require the approval of the director prior to the cannibalization of the commodity under such circumstances as the procedures may prescribe.

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

(i) The commodity identification number;

(ii) The commodity's acquisition date;

(iii) The commodity's acquisition cost;

(iv) A description of the commodity;

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

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

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

(B) If the agency has immediate plans to use the cannibalized parts, the form shall elicit the following information for the commodity or commodities that will receive the cannibalized part or parts:

(i) The commodity identification number;

(ii) The commodity's acquisition date;

(iii) The commodity's acquisition cost;

(iv) A description of the commodity;

(v) Whether the commodity is operable;

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

(vii) The cost of the parts and labor to restore the commodity to an operable condition without cannibalization.

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

(D) The procedures shall provide for the disposal of the residual components of cannibalized

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property.

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

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

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

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