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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[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.

(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.

(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;

(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;

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

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

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

(6) Selling the commodities 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 article three, chapter fifty-nine of this code. The publica-
tion 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.

(c) Upon the transfer of commodities or expendable commodities between departments, 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 four thousand pounds to an eligible volunteer fire department. The agency, with due consideration given to current market prices, shall set the price to be paid by the receiving eligible organization for motor vehicles sold pursuant to this provision: Provided, That the sale price of any motor vehicle sold to an eligible organization may not be less than the “average loan” value, as published in the most recent available eastern edition of the National Automobile Dealer's Association (N. A. D. A.) Official Used Car Guide, if the value is available, unless the fair market value of the vehicle is less than the N. A. D. A. “average loan” value, in which case the vehicle may be sold for less than the “average loan” value. 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 organiza-
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.

(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 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 fifteen 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
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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor