

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2843**

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[Originating in the Committee on Government

Organization, February 22, 2019.]



1 A BILL to amend and reenact §5A-3-45 of the Code of West Virginia, 1931, as amended; to amend  
2 said code by adding thereto a new section, designated §5A-12-15, all relating to creating  
3 the Auto Auction Pilot Program; setting a beginning and ending date for the program,  
4 establishing requirements of the program; and requiring a report after completion of the  
5 pilot program.

*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 1986, as amended;

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 §5A-3-45(g)  
18 of this code;

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-  
23 3-1 *et seq.* of this code. The publication area for the publication is the county in which the sale is  
24 to 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 a legislative rule pursuant to the provisions of chapter  
30 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 fair market value as determined by an independent automotive pricing  
40 guide, shall set the price at a fair market price to be paid by the receiving eligible organization for  
41 motor vehicles sold pursuant to this provision. The fair market value shall be based on a thorough  
42 inspection of the vehicle by an employee of the agency who shall consider the mileage of the

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

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

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

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

67 (2) The Director of the Purchasing Division shall propose for promulgation legislative rules  
68 to establish procedures that permit the cannibalization of a commodity when it is in the best

69 interests of the state. The procedures shall require the approval of the director prior to the  
70 cannibalization of the commodity under such circumstances as the procedures may prescribe.

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

- 74 (i) The commodity identification number;
- 75 (ii) The commodity's acquisition date;
- 76 (iii) The commodity's acquisition cost;
- 77 (iv) A description of the commodity;
- 78 (v) Whether the commodity is operable and, if so, how well it operates;
- 79 (vi) How the agency will dispose of the remaining parts of the commodity; and
- 80 (vii) Who will cannibalize the commodity and how the person is qualified to remove and  
81 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:

- 85 (i) The commodity identification number;
- 86 (ii) The commodity's acquisition date;
- 87 (iii) The commodity's acquisition cost;
- 88 (iv) A description of the commodity;
- 89 (v) Whether the commodity is operable;
- 90 (vi) Whether the part restores the commodity to an operable condition; and
- 91 (vii) The cost of the parts and labor to restore the commodity to an operable condition  
92 without cannibalization.

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

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

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

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

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

113 (i) The agency shall, as a pilot program beginning July 1, 2019 and ending on June 30,  
114 2020, conduct the Auto Auction Pilot Program as follows:

115 (1) Contract with a private auction house which specializes in motor vehicle auctions with  
116 sales held at least bi-monthly to sell expendable, obsolete, or unused motor vehicles owned by  
117 the state: *Provided*, That such contract may not require any payments or monetary obligations  
118 from the state or any of its spending units;

119 (2) Deliver or make available for pick up, all motor vehicles provided for sale, to the motor  
120 vehicle auction house within 14 days of receipt by the agency;

- 121 (3) Continue to sell motor vehicles in accordance with subsection (c) of this section:  
122 Provided, That the agency complies with the requirements in paragraph (2) of this subsection;  
123 (3) Create a new fund in the State Treasury, designated the Auto Auction Pilot Program  
124 Fund into which all proceeds from the sale of all motor vehicles shall be placed;  
125 (4) Deposit the proceeds of all motor vehicle sales into the Auto Auction Pilot Program  
126 Fund;  
127 (5) Disburse proceeds in accordance with subsection (f) of this section; and  
128 (6) Provide detailed information about the performance of the Auto Auction Pilot Program  
129 to the Fleet Management Division by August 31, 2020.

**ARTICLE 12. FLEET MANAGEMENT DIVISION.**

**§5A-12-15. Auto Auction Pilot Program.**

- 1 On or before November 31, 2020, The Division shall provide a detailed report to the Joint  
2 Committee on Government and Finance detailing the results of the Auto Auction Pilot Program.

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