

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2843

FISCAL
NOTE

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[Introduced February 4, 2019; Referred
to the Committee on Government Organization.]

1 A BILL to repeal §5A-3-44 and §5A-3-46 of the Code of West Virginia, 1931, as amended; to
 2 amend said code by adding thereto a new article, designated §5-17-1, §5-17-2, and §5-
 3 17-3; and to amend and reenact §5A-3-45 of said code, all relating to disposition of federal
 4 and state surplus property; creating an Office for Federal Surplus Property; providing for
 5 the creation of advisory boards or committees; specifying powers of the office; authorizing
 6 the assessment of certain storage and handling charges; terminating the State Agency for
 7 Surplus Property; authorizing spending units to dispose of their own unnecessary
 8 commodities; providing for a transition period prior to the termination of the State Agency
 9 for Surplus Property; providing for the disposition of motor vehicles and heavy equipment
 10 by public auction; and authorizing the promulgation of rules to facilitate disposition of state
 11 property.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
 GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
 BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 17. OFFICE FOR FEDERAL SURPLUS PROPERTY.

**§5-17-1. Establishment of the office for federal surplus property; creation of advisory
 boards or committees.**

1 (a) There is hereby established, under the authority and supervision of the Governor, an
 2 Office for Federal Surplus Property to be managed by a director, subject to the will and pleasure
 3 of the Governor.

4 (b) When necessary to conform with federal statutes and rules and regulations
 5 promulgated under federal statutes for the acquisition and disposition of surplus property, the
 6 Governor is authorized to create advisory boards or committees as appropriate and to appoint
 7 members to such boards or committees.

§5-17-2. Authority and powers of the office.

1 (a) The Office for Federal Surplus Property shall have the following powers:

2 (1) To acquire from the United States of America such property, including equipment,
3 materials, books, or other supplies under the control of any department or agency of the United
4 States of America as may be usable and necessary for educational, fire protection and prevention,
5 rescue, or public health purposes, including research;

6 (2) To warehouse property acquired; and

7 (3) To distribute the property to tax-supported medical institutions, hospitals, clinics, fire
8 departments, rescue squads, health centers, school systems, schools, colleges and universities
9 within the state, and to other nonprofit medical institutions, hospitals, clinics, volunteer fire
10 departments, volunteer rescue squads, health centers, schools, colleges and universities within
11 the state which have been held exempt from taxation under the Internal Revenue Code of 1986,
12 as amended.

13 (b) For the purpose of executing its authority under this article, the office is authorized to
14 adopt, amend, or rescind rules as may be deemed necessary, and take other action necessary
15 and suitable in the administration of this article, including the proposal and promulgation of rules,
16 pursuant to the provisions of §29A-3-1 et seq. of this code, necessary to bring this article and its
17 administration into conformity with any federal statutes or rules and regulations promulgated
18 under federal statutes for the acquisition and disposition of surplus property.

19 (c) The Office for Federal Surplus Property is authorized to take action, make
20 expenditures, enter into contracts, agreements, and undertakings for and in the name of the state,
21 require reports, and make investigations as may be required by law or regulation of the United
22 States of America in connection with the receipt, warehousing, and distribution of property
23 received by the state agency for surplus property from the United States of America.

24 (d) The Office for Federal Surplus Property is authorized to act as a clearinghouse of
25 information for the public and private nonprofit institutions and agencies referred to in subsection

26 (a) of this section, to locate property available for acquisition from the United States of America,
 27 to ascertain the terms and conditions under which the property may be obtained, to receive
 28 requests from the above-mentioned institutions and agencies and to transmit to them all available
 29 information in reference to the property, and to aid and assist the institutions and agencies in
 30 every way possible in the consummation or acquisition of transactions hereunder.

31 (e) The Office for Federal Surplus Property shall cooperate to the fullest extent, consistent
 32 with the provisions of this article, with the departments or agencies of the United States of America
 33 and shall make reports in the form and containing the information the United States of America
 34 or any of its departments or agencies may from time to time require, and it shall comply with the
 35 laws of the United States of America and the rules and regulations of any of the departments or
 36 agencies of the United States of America governing the allocation, transfer, use, or accounting
 37 for property donatable or donated to the state.

§5-17-3. Warehousing, transfer, and distribution charges.

1 Any charges made or fees assessed by the Office for Federal Surplus Property for the
 2 acquisition, warehousing, distribution, or transfer of any property acquired by donation from the
 3 United States of America for educational purposes or public health purposes, including research,
 4 shall be limited to those reasonably related to the costs of care and handling in respect to its
 5 acquisition, receipts, warehousing, distribution, or transfer by the Office for Federal Surplus
 6 Property. All charges designated herein shall be used by the Office for Federal Surplus Property
 7 to defray the general operating expenses of the office.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-44. Authority and duties of state agency for surplus property.

1 [Repealed.]

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

proceeds from sale transfer of responsibility for disposition of property; disposition of motor vehicles and heavy equipment; rule-making.

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~~ The state agency for surplus property shall cease all operations and shall
5 cease to exist after June 30, 2019. Prior to that date, the agency shall expedite the liquidation of
6 all property committed to it for disposal. After that date, it shall be the responsibility of each
7 spending unit that is subject to the provisions of this article to determine the most appropriate
8 means to dispose of items in inventory, commodities, or expendable commodities that are no
9 longer of use to the spending unit.

10 (b) ~~The agency shall determine what commodities or expendable commodities should be~~
11 ~~disposed of and make disposition in the manner which will be most advantageous to the state~~
12 The disposition of items in inventory, commodities, or expendable commodities, other than motor
13 vehicles and heavy equipment, may include:

14 (1) Transferring the particular commodities or expendable commodities between
15 departments or spending units;

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

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

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

25 ~~(5)~~ (4) Properly disposing of the commodities as waste;

26 ~~(6)~~ (5) Selling the commodities to the general public at the posted price or to the highest
27 bidder by means of public auctions or sealed bids, after having first advertised the time, terms,
28 and place of the sale as a Class II legal advertisement in compliance with the provisions of §59-
29 3-1 *et seq.* of this code. The publication area for the publication is the county in which the sale is
30 to be conducted. The sale may also be advertised in other advertising media that the agency
31 spending unit considers advisable. The agency spending unit may sell to the highest bidder or to
32 any one or more of the highest bidders, if there is more than one, or, if the best interest of the
33 state will be served, reject all bids; or

34 ~~(7)~~ (6) Selling the commodities to the highest bidder by means of an Internet auction site
35 ~~approved by the director, as set forth in a legislative rule pursuant to the provisions of chapter~~
36 ~~29A of this code~~ pursuant to rules promulgated by the Director of Purchasing.

37 (c) Upon the sale to the general public or transfer of commodities or expendable
38 commodities between ~~departments~~ spending units, or upon the sale of commodities or
39 expendable commodities to an eligible organization, the agency spending unit shall set the price
40 to be paid by the receiving eligible organization, with due consideration given to current market
41 prices.

42 (d) ~~The~~ Prior to the termination of the state agency for surplus property on June 30, 2019,
43 the agency may sell expendable, obsolete, or unused motor vehicles owned by the state to an
44 eligible organization, other than volunteer fire departments. In addition, during the same period,
45 the agency may sell expendable, obsolete, or unused motor vehicles owned by the state with a
46 gross weight in excess of 4,000 pounds to an eligible volunteer fire department. The agency, with
47 due consideration given to fair market value as determined by an independent automotive pricing
48 guide, shall set the price at a fair market price to be paid by the receiving eligible organization for
49 motor vehicles sold pursuant to this provision. The fair market value shall be based on a thorough
50 inspection of the vehicle by an employee of the agency who shall consider the mileage of the

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

61 (e) ~~The agency shall report~~ Upon the termination of the agency for surplus property, the
62 Director of Purchasing shall submit a final report to the Legislative Auditor, ~~semiannually~~ all sales
63 of commodities or expendable commodities made during the preceding six months to eligible
64 organizations. The report shall include a description of the commodities sold, the price paid by
65 the eligible organization which received the commodities, and to whom each commodity was sold.

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

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

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

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

- 84 ~~(i) The commodity identification number;~~
- 85 ~~(ii) The commodity's acquisition date;~~
- 86 ~~(iii) The commodity's acquisition cost;~~
- 87 ~~(iv) A description of the commodity;~~
- 88 ~~(v) Whether the commodity is operable and, if so, how well it operates;~~
- 89 ~~(vi) How the agency will dispose of the remaining parts of the commodity; and~~
- 90 ~~(vii) Who will cannibalize the commodity and how the person is qualified to remove and~~
91 ~~reinstall the parts.~~

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

- 95 ~~(i) The commodity identification number;~~
- 96 ~~(ii) The commodity's acquisition date;~~
- 97 ~~(iii) The commodity's acquisition cost;~~
- 98 ~~(iv) A description of the commodity;~~
- 99 ~~(v) Whether the commodity is operable;~~
- 100 ~~(vi) Whether the part restores the commodity to an operable condition; and~~
- 101 ~~(vii) The cost of the parts and labor to restore the commodity to an operable condition~~
102 ~~without cannibalization.~~

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

105 ~~(D) The procedures shall provide for the disposal of the residual components of~~
106 ~~cannibalized property~~

107 (g) The disposal of motor vehicles and of heavy equipment shall be conducted through
108 public auction conducted by a licensed auctioneer with prior experience in selling motor vehicles
109 or heavy equipment, as the case may be. The auction shall be advertised with notice of the time,
110 terms, and place of the sale as a Class II legal advertisement in compliance with the provisions
111 of §59-3-1 et seq. of this code. The publication area for the publication is the county in which the
112 sale is to be conducted. The sale may also be advertised in other advertising media that the
113 spending unit considers advisable. The spending unit shall also have the discretion to withdraw a
114 motor vehicle or item of heavy equipment from sale if the auction does not meet a price that is an
115 approximate fair market value for that item.

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

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

127 ~~(3) (h) If the state agency for surplus property determines, within 15 days of receiving a~~
128 ~~commodity, that disposing of the commodity in a landfill or by other lawful means of waste disposal~~

129 would be more beneficial to the state than disposing of the commodity using any other method
130 authorized in this section, the cost of the disposal is the responsibility of the agency from which it
131 received the commodity.

132 (i) The Director of Purchasing, through the Secretary of Administration, may propose rules
133 for legislative review, pursuant to the provisions of §29A-3-1 et seq. of this code, to guide spending
134 units in acceptable means of disposition of state property, to establish criteria for public sales and
135 auctions, and to facilitate the efficient disposal of commodities that are no longer of use to
136 spending units.

§5A-3-46. Warehousing, transfer, etc., charges.

1 [Repealed.]

NOTE: The purpose of this bill is to eliminate the State Agency for Surplus Property and split up its functions. Receipt and distribution of federal surplus will be handled by a new Office for Federal Surplus Property. The disposal of unnecessary or unused commodities will now be the responsibility of state spending units.

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