

4306

2013-2014 Regular Sessions

I N S E N A T E

March 20, 2013

Introduced by Sen. MARCELLINO -- (at request of the Office of General Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to the disposition of surplus state personal property

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 167 of the state finance law, as added by chapter
2 83 of the laws of 1995, subdivision 4 as amended by chapter 137 of the
3 laws of 2008 and subdivision 9 as added by chapter 261 of the laws of
4 1996, is amended to read as follows:

5 S 167. Transfer and disposal of personal property. Personal property
6 of the state which has been determined to be no longer useful may be
7 disposed of as set forth in this section. FOR PURPOSES OF THIS SECTION,
8 "PERSONAL PROPERTY" MEANS TANGIBLE PROPERTY WHICH IS NOT REAL PROPERTY,
9 AN IMPROVEMENT TO REAL PROPERTY, OR ATTACHED TO REAL PROPERTY.

10 1. The head of a state agency having custody or control of such prop-
11 erty, except vehicles, may: (a) dispose of such property in accordance
12 with applicable express statutory provisions, (b) reuse such property
13 within the same state agency, (c) use the property in part payment on a
14 new item which may include, but shall not be limited to, use as a trade-
15 in or use in a guaranteed brokerage arrangement, (d) with the consent of
16 the commissioner, place such property in the custody or control of the
17 office of general services for reuse by other state agencies or for
18 other disposition, or (e) [where the fair market value of such property
19 is less than an amount established from time to time by the commission-
20 er, dispose of such property by such means as the head of such state
21 agency deems to be in the best interest of the state] DISPOSE OF SUCH
22 PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (B) OF SUBDIVI-
23 SION THREE OF THIS SECTION. Records of each disposition shall be
24 retained by the state agency disposing of such property and shall be

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 subject to audit. Where personal property has been purchased from
2 special funds, a state agency, upon designation of the source of funds
3 from which such property was purchased, may condition the disposal of
4 such property on the reimbursement of such special fund [in the amount
5 of the fair market value of such property]. All NET proceeds realized
6 on sale or other transfer and not otherwise authorized to be deposited
7 in a special fund, shall be deposited in the general fund of the state.

8 2. The head of a state agency having custody or control of vehicles
9 which have been determined to be no longer useful shall dispose of such
10 vehicles in accordance with applicable express statutory provisions or
11 shall place such vehicles in the custody or control of the commissioner
12 unless otherwise directed by such commissioner.

13 3. (A) The commissioner may dispose of any personal property of the
14 state by sale or by such other means as he or she deems to be in the
15 best interest of the state except that personal property other than
16 vehicles OR PROPERTY SUBJECT TO THE PROVISIONS OF PARAGRAPH (B) OF THIS
17 SUBDIVISION, which [have] HAS been placed in the custody or control of
18 such commissioner by a state agency shall first be made available for
19 reuse by other state agencies by advertising such availability as widely
20 as possible among state agencies. A record of each disposition shall be
21 retained and shall be subject to audit. [The commissioner may also from
22 time to time establish a fair market value level below which personal
23 property determined to be no longer useful may be disposed of immediate-
24 ly by state agencies through such means as, in the discretion of such
25 agencies, are in the best interest of the state.]

26 (B) UPON APPLICATION TO THE COMMISSIONER BY A STATE AGENCY HAVING
27 CUSTODY OR CONTROL OF: (I) SURPLUS PERSONAL PROPERTY OF A UNIQUE, EXCEP-
28 TIONAL OR SINGULAR NATURE, OR (II) PROPERTY DETERMINED TO BE NO LONGER
29 USEFUL AND NOT CAPABLE OF GENERATING MEASURABLE VALUE, THE COMMISSIONER
30 MAY DETERMINE THAT IT IS MORE SUITABLE FOR SUCH AGENCY TO SELL OR OTHER-
31 WISE DISPOSE OF SUCH PROPERTY THROUGH A LOCAL DISPOSITION THROUGH SUCH
32 MEANS AS, IN DIRECTION OF SUCH AGENCIES, ARE IN THE BEST INTEREST OF THE
33 STATE. THE COMMISSIONER MAY CONDITION APPROVAL OF SUCH LOCAL DISPOSITION
34 UPON SUCH CRITERIA AS MAY BE DEEMED PRUDENT AND REASONABLE IN CONSIDER-
35 ATION OF THE BEST INTERESTS OF THE STATE. SUCH LOCAL DISPOSITION SHALL
36 BE EXEMPT FROM THE REQUIREMENTS OF PARAGRAPH (A) OF THIS SUBDIVISION AND
37 SUBDIVISION FOUR OF THIS SECTION. A RECORD OF EACH AND EVERY DISPOSI-
38 TION SHALL BE RETAINED BY THE AGENCY AND SHALL BE SUBJECT TO AUDIT BY
39 THE COMMISSIONER.

40 4. (a) Prior to the public sale of surplus state personal property
41 WHICH IS NOT DISPOSED OF AS PROVIDED IN PARAGRAPH (B) OF SUBDIVISION
42 THREE OF THIS SECTION, and if the commissioner has determined that
43 personal property of the state shall be sold, the office of general
44 services must first offer to sell such property to municipalities of the
45 state. The availability of surplus personal property, and the offer to
46 sell such property, shall be advertised to municipalities on the office
47 of general services' website for a minimum of [seven] THREE BUSINESS
48 days. A municipality shall immediately advise the commissioner whether
49 or not the municipality wishes to acquire such personal property. If it
50 wishes to acquire such personal property, a municipality shall have
51 [thirty] TEN days to arrange delivery of such property and to conclude
52 the negotiation of the sale. If two or more municipalities notify the
53 commissioner of their wish to acquire such personal property, such
54 personal property shall be sold to the highest offer complying with the
55 terms of the sale as set by the commissioner. [All] THE NET proceeds of
56 ALL such sales shall be deposited to the credit of the general fund of

1 the state unless otherwise required by law. A record of each sale shall
2 be retained and shall be subject to audit. After the [thirty] TEN day
3 period for municipalities to arrange delivery of such property and to
4 conclude the negotiation of the sale, the property may be disposed of
5 pursuant to paragraph (b) of this subdivision. For the purposes of this
6 section, "municipality" shall mean a city, county, town or village.

7 (b) Where the commissioner has determined that there are no interested
8 municipalities pursuant to paragraph (a) of this subdivision, the avail-
9 ability of such property, THE TERMS OF SALE AND THE DATE OF SALE shall
10 be advertised [at least once prior to sale in a local newspaper] ON THE
11 OFFICE OF GENERAL SERVICES' WEBSITE FIVE BUSINESS DAYS PRIOR TO THE DATE
12 OF SALE. [Such advertisement shall identify the property, the place
13 where the terms of sale may be obtained and the date upon which offers
14 will be received.] In cases of emergency or special circumstances, such
15 notice may be waived if at least three separate and independent offers
16 are solicited and obtained. [Notwithstanding the provisions of this
17 section, where the property will be sold by public auction over the
18 internet, such notice may be waived if notification of the availability
19 of such property is provided on the office of general services' website
20 five business days prior to sale.] Every such sale shall be made to the
21 highest offer complying with the terms of sale and [all] THE NET
22 proceeds of ALL such sales shall be deposited to the credit of the
23 general fund of the state unless otherwise required by law. A record of
24 each sale shall be retained and shall be subject to audit.

25 5. The secretary of the senate shall also have the power, at the
26 request of any member of the senate who shall hereafter resign or whose
27 term of office shall hereafter terminate, or the surviving spouse of
28 such member, to sell to such member, or to such surviving spouse, the
29 chair last occupied by such member in the senate for the sum of twenty-
30 five dollars, depositing any moneys received from such sale in the
31 [state treasury] GENERAL FUND; provided, however, that a written request
32 therefor, accompanied by the payment herein provided, be submitted to
33 the secretary of the senate within ninety days after any such resigna-
34 tion or termination of term of office; and provided further that not
35 more than one such chair may be thus sold, regardless of any service
36 subsequently rendered as a member of the senate. In the event that any
37 member of the senate dies leaving no surviving spouse, the secretary of
38 the senate shall have the power to sell such chair, upon the terms and
39 conditions hereinabove prescribed, and in the following order of priori-
40 ty: (i) to any person designated by such member in a writing filed with
41 the secretary of the senate, or (ii) to a child of such member, if any,
42 in the order of seniority, (iii) to the father of such member, (iv) to
43 the mother of such member, (v) to a brother or sister of such member in
44 the order of seniority.

45 6. The clerk of the assembly shall have the power, at the request of
46 any member of the assembly who shall hereafter resign or whose term of
47 office shall hereafter terminate, or the surviving spouse of such
48 member, to sell to such member, or to such surviving spouse, the chair
49 last occupied by such member in the assembly for the sum of twenty-five
50 dollars, depositing any moneys received from such sale in the [state
51 treasury] GENERAL FUND; provided, however, that a written request there-
52 for, accompanied by the payment herein provided, be submitted to the
53 clerk of the assembly within ninety days after such resignation or
54 termination of term of office; and provided further that not more than
55 one such chair may be thus sold, regardless of any service subsequently
56 rendered as a member of the assembly. In the event that any member of

1 the assembly dies leaving no surviving spouse, the clerk of the assembly
2 shall have the power to sell such chair, upon the terms and conditions
3 hereinabove prescribed, and in the following order of priority: (i) to
4 any person designated by such member in a writing filed with the clerk
5 of the assembly, or (ii) to a child of such member, if any, in the order
6 of seniority, (iii) to the father of such member, (iv) to the mother of
7 such member, (v) to a brother or sister of such member in the order of
8 seniority.

9 7. The commissioner shall have the power, at the request of a former
10 governor or head of a state department or agency, or the surviving
11 spouse of such a former official, to sell to such former official, or to
12 his or her surviving spouse, selected articles of furniture, in use by
13 such former official at the termination of his services as governor or
14 head of a state department or agency in the private offices of the
15 governor in the executive chamber or in the office occupied by such
16 former head of a state department or agency, for the reasonable value
17 thereof as articles of furniture as determined by the commissioner,
18 depositing any moneys received from such sale in the [state treasury]
19 GENERAL FUND; provided, however, that a written request therefor, speci-
20 fying the articles to be purchased, be submitted to the commissioner
21 within ninety days after the termination of such service.

22 8. The provisions of subdivision one of this section shall not apply
23 to the transfer of library books and journals, provided, however, that
24 in the event any such items are to be transferred or disposed of in a
25 manner other than as provided by such subdivision, the head of the
26 department having custody or control of the library book or journal
27 shall certify that it is no longer needed by the department and a record
28 of the transfer or disposal, including such certification, shall be
29 filed with and kept by the office of general services.

30 9. The application of subdivisions one and three of this section to
31 the transfer of computers, computer software and computer equipment, not
32 required for trade-in, reuse within the agency, or requested by another
33 state agency, shall be in conformity with section one hundred sixty-
34 eight of this article. Disposal of computer equipment pursuant to para-
35 graph (e) of subdivision one of this section, or disposal of computer
36 equipment by an agency in the exercise of its discretion according to
37 subdivision three of this section shall be deemed to be in the best
38 interest of the state if in conformity with section one hundred sixty-
39 eight of this article, or if the head of the disposing agency demon-
40 strates the existence of a greater state interest in an alternate
41 disposal. DISPOSAL OF COMPUTERS AND/OR OTHER ELECTRONIC EQUIPMENT,
42 INCLUDING, BUT NOT LIMITED TO PRINTERS, COPIERS, TELEPHONE FACSIMILE
43 MACHINES THAT CONTAIN HARD DRIVES OR INTERNAL MEMORY CAPABLE OF STORING
44 DATA MUST COMPLY WITH STATEWIDE INFORMATION SECURITY POLICIES, STAND-
45 ARDS, PROTOCOLS AND PROCEDURES ESTABLISHED BY THE DIVISION OF HOMELAND
46 SECURITY AND EMERGENCY SERVICES. DISPOSAL OF COMPUTERS AND/OR OTHER
47 ELECTRONIC EQUIPMENT WHICH HAVE BEEN DETERMINED TO BE WASTE PURSUANT TO
48 SECTION 27-2601 OF THE ENVIRONMENTAL CONSERVATION LAW, BY MEANS DETAILED
49 IN THE PROVISIONS OF SECTION 27-2601 THROUGH 27-2621 OF THE ENVIRON-
50 MENTAL CONSERVATION LAW, SHALL BE DEEMED TO BE IN CONFORMITY WITH THE
51 REQUIREMENTS OF THIS SECTION AND SECTION ONE HUNDRED SIXTY-EIGHT OF THIS
52 ARTICLE.

53 S 2. This act shall take effect immediately.