S T A T E O F N E W Y O R K

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:

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

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

1. The head of a state agency having custody or control of such property, except vehicles, may: (a) dispose of such property in accordance with applicable express statutory provisions, (b) reuse such property within the same state agency, (c) use the property in part payment on a new item which may include, but shall not be limited to, use as a trade-in or use in a guaranteed brokerage arrangement, (d) with the consent of the commissioner, place such property in the custody or control of the office of general services for reuse by other state agencies or for other disposition, or (e) [where the fair market value of such property is less than an amount established from time to time by the commissioner, dispose of such property by such means as the head of such state agency deems to be in the best interest of the state] DISPOSE OF SUCH PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION. Records of each disposition shall be 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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subject to audit. Where personal property has been purchased from special funds, a state agency, upon designation of the source of funds from which such property was purchased, may condition the disposal of such property on the reimbursement of such special fund [in the amount of the fair market value of such property]. All NET proceeds realized on sale or other transfer and not otherwise authorized to be deposited in a special fund, shall be deposited in the general fund of the state.

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

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

(B) UPON APPLICATION TO THE COMMISSIONER BY A STATE AGENCY HAVING CUSTODY OR CONTROL OF: (I) SURPLUS PERSONAL PROPERTY OF A UNIQUE, EXCEPTIONAL OR SINGULAR NATURE, OR (II) PROPERTY DETERMINED TO BE NO LONGER USEFUL AND NOT CAPABLE OF GENERATING MEASURABLE VALUE, THE COMMISSIONER MAY DETERMINE THAT IT IS MORE SUITABLE FOR SUCH AGENCY TO SELL OR OTHERWISE DISPOSE OF SUCH PROPERTY THROUGH A LOCAL DISPOSITION THROUGH SUCH MEANS AS, IN DIRECTION OF SUCH AGENCIES, ARE IN THE BEST INTEREST OF THE STATE. THE COMMISSIONER MAY CONDITION APPROVAL OF SUCH LOCAL DISPOSITION UPON SUCH CRITERIA AS MAY BE DEEMED PRUDENT AND REASONABLE IN CONSIDERATION OF THE BEST INTERESTS OF THE STATE. SUCH LOCAL DISPOSITION SHALL BE EXEMPT FROM THE REQUIREMENTS OF PARAGRAPH (A) OF THIS SUBDIVISION AND SUBDIVISION FOUR OF THIS SECTION. A RECORD OF EACH AND EVERY DISPOSITION SHALL BE RETAINED BY THE AGENCY AND SHALL BE SUBJECT TO AUDIT BY THE COMMISSIONER.

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

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

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

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

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

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

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

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

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

S 2. This act shall take effect immediately.