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SENATE BILL DRS35102-MQ-74

Short Title: State Surplus Property/Third-Party Auctions. (Public)

Sponsors: Senators McInnis, Sawyer, and Settle (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW FOR STATE AGENCIES TO UTILIZE THIRD-PARTY AUCTION  
3 SITES FOR THE SALE OR DISPOSITION OF STATE-OWNED PROPERTY.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Part 1 of Article 3A of Chapter 143 of the General Statutes reads as  
6 rewritten:

7 "Article 3A.

8 "Surplus Property.

9 "Part 1. State Surplus Property Agency.

10 "§ 143-64.01. Department of Administration designated State Surplus Property Agency.

11 The State Surplus Property Agency division within the Department of Administration is  
12 designated as the State agency for State surplus property, and with respect to the acquisition of  
13 State surplus property the agency shall be subject to the supervision and direction of the Secretary  
14 of Administration.

15 "§ 143-64.02. Definitions.

16 The following definitions apply in Part 1 of this Article:

17 (1) Agency. – ~~An existing~~ A unit of the executive branch, including any  
18 department, institution, commission, committee, board, division, or bureau of  
19 the State. The term includes the Council of State, The University of North  
20 Carolina, and the State Board of Community Colleges.

21 ...

22 (4) ~~State owned.~~ State-owned property. – Supplies, materials, and equipment  
23 equipment, inventory, farm products, goods, and consumer goods, as those  
24 terms are defined in Chapter 25 of the General Statutes, in the possession of  
25 the State of North Carolina and purchased with State funds, personal property  
26 donated to the State, or personal property purchased with other funds that give  
27 ownership to the State, State, or personal property rightfully seized or acquired  
28 by the State. The term does not include real property.

29 (5) Surplus property. – ~~Personal~~ State-owned property that is obsolete, unused, or  
30 no longer needed by a State agency.

31 "§ 143-64.03. Powers and duties of the State agency for surplus property.

32 (a) The State Surplus Property Agency is authorized and directed ~~to do the following:~~

33 (1) ~~Sell~~ Coordinate the sale of all State owned supplies, materials, and equipment  
34 that are surplus, obsolete, or unused surplus property and sell all seized  
35 vehicles and other conveyances that the State Surplus Property Agency is  
36 authorized to ~~sell;~~ sell.



1 (2) Warehouse such ~~property; and~~ property.

2 (3) Distribute such property to tax-supported or nonprofit tax-exempt  
3 organizations.

4 (b) The State Surplus Property Agency is authorized and empowered to act as a  
5 clearinghouse of information for agencies and private nonprofit tax-exempt organizations, to  
6 locate property available for acquisition from State agencies, to ascertain the terms and conditions  
7 under which the property may be obtained, to receive requests from agencies and private  
8 nonprofit tax-exempt organizations, and transmit all available information about the property,  
9 and to aid and assist the agencies and private nonprofit tax-exempt organizations in transactions  
10 for the acquisition of ~~State~~ surplus property. Prioritization should be given to distributing  
11 computer equipment to nonprofit entities that refurbish computers and donate them to  
12 low-income students or households in this State, the State Surplus Property Agency shall  
13 distribute the computer equipment at no cost or the lowest possible cost to the nonprofit entities  
14 and must give consideration to the counties where the computer equipment will be donated to  
15 ensure that all geographic regions of the State benefit from the distributions.

16 (b1) Nothing in this Article, or any administrative rules promulgated under this Article,  
17 shall be deemed to prohibit The University of North Carolina from doing the following:

18 (1) Conveying surplus computer equipment at no cost. The University of North  
19 Carolina is encouraged to prioritize distribution to nonprofit entities that  
20 refurbish computers to donate to low-income students or households in the  
21 State. Any conveyance to a nonprofit under this subdivision shall be  
22 conditioned upon, and in consideration of, the nonprofit's promise to refurbish  
23 the computer equipment and its donation to low-income students or  
24 households in the State and the nonprofit's reporting of information required  
25 by subsection (b2) of this section. After an initial conveyance, The University  
26 of North Carolina shall not convey additional surplus computer equipment to  
27 a nonprofit, unless that nonprofit has reported the information required by  
28 subsection (b2) of this section for prior conveyances.

29 (2) Entering into agreements with one or more vendors to trade in any  
30 technological equipment purchased from the vendor or to allow a vendor to  
31 buy back any technological equipment even if the equipment was not  
32 purchased from that vendor.

33 (b2) When either distributing surplus computer equipment as provided in subdivision (1)  
34 of subsection (b1) of this section or entering into a trade-in or buyback agreement under  
35 subdivision (2) of subsection (b1) of this section, The University of North Carolina shall keep  
36 records on the type of computer equipment distributed or the technological equipment subject to  
37 the agreement, the number of computers distributed or the type and quantity of technological  
38 equipment subject to the agreement, the name of the nonprofit that received the distributions or  
39 the name of the vendor subject to the agreement, and the nonprofit's report on donations of  
40 refurbished computers to low-income students or households in the State. If the nonprofit is  
41 unable to refurbish computer equipment for any reason, its report shall include the disposition of  
42 such computer equipment. A nonprofit shall provide a report to the Board of Governors of The  
43 University of North Carolina by February 1, 2022, and by February 1 of each year thereafter. The  
44 report shall contain the information required by this subsection and any other information the  
45 Board of Governors deems reasonably necessary to ensure the conditions required under this  
46 subsection are satisfied. The Board of Governors of The University of North Carolina shall  
47 submit a report containing the information required to be collected under this subsection to the  
48 Joint Legislative Education Oversight Committee by December 1, 2022, and by March 1 of each  
49 year thereafter.

1 (c) ~~The State agency for surplus property, Surplus Property Agency,~~ in the administration  
2 of Part 1 of this Article, shall cooperate to the fullest extent consistent with the provisions of Part  
3 1 of this Article, with the departments or agencies of the State.

4 (d) ~~The State agency for surplus property Surplus Property Agency may sell or otherwise~~  
5 ~~dispose of surplus property, including motor vehicles, through an electronic auction service or~~  
6 ~~any third-party auction service. The General Assembly and the Judicial Department may sell or~~  
7 ~~otherwise dispose of State-owned or surplus property within their possession and control.~~

8 **"§ 143-64.03A. Third-party auctions; auction procedures; reporting.**

9 (a) An agency may utilize a third-party auction service by submitting a petition to the  
10 State Surplus Property Agency for approval. All petitions submitted under this subsection shall  
11 be approved unless one or more of the circumstances listed in subsection (b) of this section apply.  
12 The State Surplus Property Agency shall approve or deny a petition submitted under this  
13 subsection within 30 days of submission and shall transmit the approval or denial to the agency  
14 in writing. A denial of a petition shall include a detailed justification for the denial under one or  
15 more of the circumstances listed in subsection (b) of this section. Within 30 days of receiving a  
16 denial, an agency may appeal the denial by submitting a written appeal to the Secretary of  
17 Administration detailing why the denial of the petition under subsection (b) of this section was  
18 improper. The Secretary of Administration may uphold the initial petition denial or approve the  
19 petition as submitted.

20 (b) The State Surplus Property Agency may deny a petition to use a third-party auction  
21 service submitted under this section if one or more of the following circumstances apply:

22 (1) The third-party auction service has had a license denied, suspended, or  
23 revoked pursuant to Chapter 85B of the General Statutes or faced any other  
24 similar disciplinary action by a State or federal governmental entity.

25 (2) The third-party auction service is or was debarred from entering into contracts  
26 by the Department of Administration pursuant to Article 3 of Chapter 143 of  
27 the General Statutes.

28 (3) The third-party auction service charges the State a fee, or any combination of  
29 fees to the State, that exceeds eight percent (8%) of the final selling price of  
30 the item.

31 (c) Upon a finding that one or more of the circumstances listed in subsection (b) of this  
32 section apply, a prior approval of a petition to use a third-party auction service under this section  
33 is subject to revocation by the State Surplus Property Agency upon written notice to the agency  
34 utilizing the third-party auction service. Within 30 days of receiving the notice of revocation, an  
35 agency may appeal the revocation by submitting a written appeal to the Secretary of  
36 Administration detailing why the revocation was improper. The Secretary of Administration may  
37 uphold or rescind the notice of revocation.

38 (d) All items that are listed through a third-party auction site or through a Department of  
39 Administration auction site shall be listed a minimum of three times before disposal of the item.  
40 An agency may dispose of items that have not sold after three attempts. All items, whether the  
41 item is sold by a third-party auction service or by the Department of Administration in-house  
42 auction platform, that are valued at one hundred dollars (\$100.00) or more based on fair market  
43 value shall have a minimum bid price set at no less than twenty-five percent (25%) of the fair  
44 market value of the item. Fair market value shall be determined by the selling agency or, at the  
45 selling agency's discretion, by a certified appraiser licensed pursuant to Chapter 95E of the  
46 General Statutes. If an agency chooses to use a third-party auction service, the agency must first  
47 report the item to the State Surplus Property Agency. Items listed through a third-party auction  
48 service may be stored at a location chosen by the agency, including the State Surplus Property  
49 warehouse, an agency facility, or a third-party auction service facility.

1       (e) Each agency shall keep a record of items sold through third-party auction services  
2 and items that were disposed of. The following information shall be retained by the agency for a  
3 period of three years:

4           (1) The name of the item listed on the third-party auction site, along with any  
5 identifiable information used in the sale or disposition of the item.

6           (2) The final bid amount for the item.

7           (3) The amount received by the agency for the sale or disposition of the item.

8           (4) The amount paid to the third-party auction service, if any.

9           (5) If disposed after being unable to sell, the manner of disposition.

10       (f) On January 1, and then annually thereafter, each agency utilizing a third-party auction  
11 service shall submit to the Joint Legislative Oversight Committee on General Government a  
12 report that includes the following:

13           (1) A listing of the third-party auction services that were used to sell surplus  
14 items.

15           (2) The total funds received by sales through each auction service.

16           (3) The total funds distributed to each agency.

17           (4) The total funds disbursed to the Department of Administration.

18       (g) On January 1, and then annually thereafter, the State Surplus Property Agency shall  
19 submit to the Joint Legislative Oversight Committee on General Government a report that  
20 includes the following:

21           (1) The number of petitions submitted from agencies under this section.

22           (2) The number of petitions from agencies that were denied.

23           (3) A detailed justification of why each petition was denied.

24           (4) The results of any appeals that were submitted to the Secretary of  
25 Administration.

26       Once a petition has been approved, the agency shall be allowed to continue using the  
27 third-party auction service, unless the approval is revoked pursuant to subsection (c) of this  
28 section.

29 **"§ 143-64.04. Powers of the Secretary to delegate authority.**

30       (a) ~~The Secretary of Administration may delegate to any employees of the State agency~~  
31 ~~for surplus property~~ Surplus Property Agency such power and authority as he or they deem the  
32 Secretary deems reasonable and proper for the effective administration of Part 1 of this Article.  
33 The Secretary of Administration may, in his-the Secretary's discretion, bond any person in the  
34 employ of the State agency for surplus property, Surplus Property Agency handling moneys,  
35 signing checks, or receiving or distributing property from the United States under authority of  
36 Part 1 of this Article.

37       (b) The Secretary of Administration may adopt rules necessary to carry out Part 1 of this  
38 Article.

39 **"§ 143-64.05. Service charge; receipts.**

40       (a) ~~The State agency for surplus property~~ Surplus Property Agency may assess and  
41 collect a service charge (i) for the acquisition, receipt, warehousing, distribution, or transfer of  
42 any State surplus property; (ii) for the transfer or sale of recyclable material; and (iii) for the  
43 towing, storing, processing, maintaining, and selling of motor vehicles seized pursuant to  
44 G.S. 20-28.3. The service charge authorized by this subsection does not apply to the transfer or  
45 sale of timber on land owned by the Wildlife Resources Commission or the Department of  
46 Agriculture and Consumer Services. No fee or service charge may be assessed or charged to an  
47 agency utilizing a third-party auction service pursuant to G.S. 143-64.03A.

48       ...."

49       **SECTION 2.** This act is effective when it becomes law.