

1 HB472
2 128174-1
3 By Representative Shiver
4 RFD: State Government
5 First Read: 07-APR-11

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8 SYNOPSIS: Under existing law, surplus property owned
9 by a state agency is sold by the Department of
10 Economic and Community Affairs.

11 This bill would provide that these surplus
12 property provisions would not apply to diseased
13 timber or storm or fire damaged timber or to timber
14 cut on rights-of-way or easements on any property
15 in any state forest or other property under the
16 jurisdiction of the Forestry Commission.

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18 A BILL
19 TO BE ENTITLED
20 AN ACT
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22 To amend Section 41-16-123 of the Code of Alabama
23 1975, relating to the sale of surplus property owned by a
24 state agency, to exclude from the sale provisions diseased
25 timber or storm or fire damaged timber or to timber cut on
26 rights-of-way or easements on any property in any state forest

1 or other property under the jurisdiction of the Forestry
2 Commission.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 41-16-123 of the Code of Alabama
5 1975, is amended to read as follows:

6 "§41-16-123.

7 "This section shall apply only to that property that
8 has been held by the division for a period of not less than 60
9 days from the date the property is first published in the list
10 of surplus property, as set out in subsection (b) of Section
11 41-16-121, and not purchased by any eligible entity as set out
12 in subsection (e) of Section 41-16-120 as follows:

13 "(1) All contracts made by or on behalf of the State
14 of Alabama or a department, board, bureau, commission,
15 institution, corporation, or agency thereof, of whatever
16 nature for the sale or disposal of tangible personal property
17 owned by the State of Alabama, other than the following:

18 "a. Alcoholic beverages.

19 "b. Products of the Alabama Institute for Deaf and
20 Blind.

21 "c. Barter arrangements of the state prison system.

22 "d. Books.

23 "e. School supplies.

24 "f. Food.

25 "g. Property used in vocational projects.

26 "h. Livestock.

1 "i. Property owned by any state college or
2 university, including those state two-year colleges under the
3 control of the Board of Education of the State of Alabama,
4 which has market value or which has trade-in value which may
5 be credited against the cost of replacement property purchased
6 in accordance with the Alabama competitive bid laws. For
7 property owned by those state two-year colleges under control
8 of the State Board of Education, the college shall file with
9 the Chancellor of the Postsecondary Education Department, on
10 forms provided by the Chancellor, a list of the property to be
11 sold, the auctioneer to be used, the place the property will
12 be sold, and when and where the property will be advertised
13 pursuant to state law. After the sale, the college shall file
14 a report with the Chancellor stating the property sold at
15 auction, the price paid for each piece of property, the amount
16 received from sale of each piece of property, the account to
17 which auction receipts were deposited, a copy of the
18 advertisement, and the commission paid to the auctioneer.

19 "j. Types of property, the disposal of which is
20 otherwise provided for by law or which, by nature, are
21 incapable of sale by auction or bid, shall be let by free and
22 open competitive public auction or sealed bids. This
23 subsection shall not be construed to prevent disposal by the
24 division of property owned by a state college or university
25 should there be an agreement between the division and the
26 respective college or university for the disposal by free and

1 open competitive public auction or sealed bids as described in
2 this subsection.

3 "k. Alabama State Port Authority surplus property.

4 "l. Surplus personal computers may be designated as
5 scrap by the division. The division is hereby authorized to
6 sell by sealed bid property designated as scrap at such
7 intervals as deemed necessary by the division.

8 "m. Surplus property of the Alabama Space Science
9 Exhibit Commission and of the Alabama Space Science Exhibit
10 Finance Authority.

11 "(2) Every proposal to make a sale covered by this
12 section shall be advertised for at least two weeks in advance
13 of the date fixed for receiving bids. The advertisement shall
14 appear at least once a week for two consecutive weeks in a
15 newspaper of general circulation in the county where the sale
16 is to be made, and a copy of the proposal shall simultaneously
17 be posted on a readily accessible public bulletin board at the
18 main office of the director of the division. Advertisements
19 for bids shall state the item or items to be sold, by class
20 and description, where the property is located and the dates,
21 time, and place the property may be inspected. The
22 advertisements shall further state the date, time, and place
23 of auction or opening of sealed bids, and no bid shall be
24 received at any time after the time advertised.

25 "(3) The bids shall be publicly taken or opened, in
26 case of sealed bids, by the director of the division and all

1 bidders shall be entitled to be present in person or by
2 representative.

3 "(4) The award of the contract shall be made to the
4 successful bidder within 72 hours after taking of the bids.

5 "(5) The bid of the successful bidder so marked, as
6 well as the bids of the unsuccessful bidders in the case of
7 sealed bids, shall be placed on file open to public inspection
8 and shall become matters of public record.

9 '(6) If a successful bidder shall fail to accept
10 award of a contract, then he or she shall be prohibited from
11 bidding at any sale held by the division unless reinstated by
12 the director.

13 "(7) The director of the division may sell all items
14 by lot or by individual item, whichever method, in his or her
15 opinion, will bring the highest return for the items
16 advertised.

17 "(8) In the event all bids received are less than
18 the estimated market value of the property, the director of
19 the division may reject all bids and readvertise and rebid.

20 "(9) Nothing herein shall be construed to prevent
21 the director of the division from contracting with the highest
22 bidder for any type of property to sell to that bidder all of
23 that type of property at his or her bid price during that
24 fiscal year providing that arrangement was included in the
25 initial request for bids.

26 "(10) All property advertised pursuant to this
27 section shall be available for inspection during the normal

1 state office hours and at whatever place advertised for at
2 least 48 hours prior to sale.

3 "(11) All property sold pursuant to this section
4 shall be paid for by the purchaser or his or her
5 representative by cashier's check, bank draft, certified
6 check, U.S. currency, or notarized bank letter stating that
7 the holder may purchase surplus property and also stating a
8 maximum amount, at the time of acceptance of bid and award of
9 contract, and the removal shall be not later than seven
10 business days after the awarding of the contract and the time
11 limit of seven days shall not be applicable to sales of
12 standing timber.

13 "(12) All proceeds from sales made pursuant to this
14 section shall be paid into the State Treasury or other legally
15 authorized depository to be credited to the proper fund as set
16 out in subsection (c) of Section 41-16-122 prior to final
17 distribution as set out in subdivision (16) of this section.

18 "(13) No officer or employee of the State of Alabama
19 or any of its departments, boards, bureaus, commissions,
20 institutions, corporations, or agencies shall act as agent for
21 any bidder and the officers or employees shall not be excluded
22 from bidding on or purchasing state property at public sale or
23 sealed bid.

24 "(14) Any sale of tangible personal property or
25 standing timber of the state made in violation of the terms of
26 this article shall be null and void, and the person or persons
27 responsible for the violation shall be subject to liquidated

1 damages of not less than one thousand dollars (\$1,000) nor
2 more than ten thousand dollars (\$10,000), which may be
3 recovered for the State of Alabama by the Attorney General by
4 civil action in the Circuit Court of Montgomery County. Any
5 moneys recovered by the Attorney General under this section
6 shall be equally divided between the office of the Attorney
7 General and the State General Fund.

8 "(15)a. The provisions of this article shall not
9 apply to the sale of diseased, storm, or fire-damaged timber,
10 to timber cut on rights-of-way or easements, or to the sale of
11 timber cut for safety, maintenance, or construction purposes
12 at any state park or state-owned public fishing lake under the
13 jurisdiction of the Department of Conservation and Natural
14 Resources. The timber may be sold or otherwise disposed of in
15 a manner the Commissioner of Conservation and Natural
16 Resources deems in the best interest of the state and no sale
17 of diseased timber shall be made until the State Forester
18 shall certify that the timber is diseased, and the
19 certification shall be in written form and filed with the
20 Director of Finance.

21 "b. The provisions of this article shall not apply
22 to the sale of diseased timber or storm or fire-damaged timber
23 or to timber cut on rights-of-way or easements in any state
24 forest or on any other land under the jurisdiction of the
25 Forestry Commission. The timber may be sold or otherwise
26 disposed of in a manner the State Forester deems in the best
27 interest of the state, except the sale of diseased timber

1 shall be made only after the State Forester certifies in
2 writing to the Director of Finance that the timber is
3 diseased.

4 "(16) Whenever any surplus property that was
5 purchased with either earmarked state funds or restricted
6 federal funds is sold by the division, the proceeds from the
7 sale, less administrative expenses, shall be deposited to the
8 credit of the specific fund of the state department,
9 commission, or agency from which the original purchase of the
10 property was made within 30 days from receipt of the proceeds.
11 If the source of the original purchase of the property was a
12 General Fund appropriation, then the sale proceeds, less any
13 administrative fee, as set out in the rules authorized to be
14 promulgated by the division, shall be credited to the account
15 from which it was purchased. In no event shall the
16 administrative fee exceed 30 percent of the gross sale price.

17 "(17) All educational and eleemosynary institutions,
18 not exempted in subdivision (1) of this section, governed by a
19 board of trustees or other similar governing body, and the
20 Department of Mental Health shall be governed by the
21 provisions of this article.

22 "(18) Violation of the provisions of this article
23 shall constitute a Class B misdemeanor punishable as
24 prescribed by law.

25 "(19) Following the implementation of subdivisions
26 (1) to (18), inclusive, the division shall have the authority
27 to make available for sale to the general public such

1 remaining unsold surplus property, as established by the
2 division and set out in its published rules."

3 Section 2. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.