

**Amendment 4232, Section 4004 — To provide that the Department of Defense auction new, unused, or excellent condition excess inventory to the highest bidder rather than transferring at no cost to federal and state agencies.**

**The Department of Defense currently gives away millions of dollars of new, unused, excellent condition equipment for free**

According to the Government Accountability Office (GAO) DOD gave away \$225M in equipment, supplies, and inventory to other federal agencies and donated \$80M to state and local governments from FY2002 to FY2004.

**This amendment saves money for the government by requiring the Department of Defense to sell perfectly good equipment at a market price, rather than give it away for free**

The Defense Logistics Agency stated that the Department of Defense gave away around \$200 million worth of equipment annually to state agencies in Fiscal Year 2008 and Fiscal Year 2009. Assuming a 25% resell rate for this equipment, changing the rules could bring into the Treasury over \$500 million over a ten-year period.

**There is already a mechanism in place for public sales of new, unused, or high quality excess inventory equipment**

The public bought \$2.1 billion in excess equipment, supplies, and inventory from the Department of Defense over the same time period utilizing public auctions.

**There are lax controls over whether the state and local governments are using the equipment as intended or if they are eligible**

The city of Henry, Tennessee was found to have applied to the Department of Defense to obtain law enforcement equipment and signed an agreement to use it for that purpose only. When an audit was conducted however, the city had used the equipment for general city government instead.

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According to the Government Accountability Office (GAO) DOD gave away \$225M in equipment, supplies, and inventory to other federal agencies and donated \$80M to state and local governments from FY2002 to FY2004.<sup>1</sup> In contrast, the public bought \$2.1 billion in excess equipment, supplies, and inventory from the Department of Defense over the same time period. Excess Department of Defense property is any property that is no longer required by one of the military services and does not have national security implications for its reuse.

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The Federal Property and Administrative Services Act of 1949 places responsibility for the disposition of government real and personal property with the General Services Administration (GSA). That agency delegated disposal of DOD property to the Secretary of Defense, who in turn delegated it to DLA. The Office of the Deputy Under Secretary of Defense (Logistics) provides overall guidance for disposing of property, and DLA's Defense Logistics Support Command is responsible for disposal policy. The military services are responsible for determining if certain property they hold exceeds their needs. Once they do so, the Defense Reutilization and Marketing Service (DRMS) carries out disposal functions through DRMOs.<sup>2</sup>

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<sup>1</sup> GAO Report 05-729T, "DOD Excess Property: Management Control Breakdowns Result in Substantial Waste and Efficiency," Government Accountability Office, June 7, 2005, <http://www.gao.gov/new.items/d05729t.pdf>.

<sup>2</sup> GAO Report OSI/NSIAD-00-147, "Inventory Management: Better Controls Needed to Prevent Misuse of Excess DOD Property," Government Accountability Office, April 2000, <http://www.gao.gov/new.items/o400147.pdf>.

The Defense Reutilization and Marketing Service (DRMS) is part of the Defense Logistics Agency and they administer the program. The mission is to reuse, transfer, donate, sell or dispose of excess/surplus property.

The Department of Defense, under current rules, is allowed to transfer new, unused, and high quality equipment to other federal agencies, state, and local governments at no charge. This creates a perverse incentive for federal agencies to acquire equipment just because it is free and is not because they need it. For state and local governments that actually need the equipment, they are obtaining it at no cost to them.

However, GAO has noted that DRMS has had some trouble in executing this program. DRMS has been giving away or selling items for pennies on the dollar that the Department of Defense continues to purchase for use by our troops. GAO identified at least \$400 million of fiscal year 2002 and 2003 commodity purchases when identical new, unused, and excellent condition items were available for reutilization.

GAO also identified hundreds of millions of dollars in reported lost, damaged, or stolen excess property, including sensitive military technology items, which contributed to reutilization program waste and inefficiency. Further, excess property improperly stored outdoors for several months was damaged by wind, rain, and hurricanes.<sup>3</sup>

In another instance, GAO found that the Defense Reutilization and Marketing Service may have provided over \$100 million in equipment for free to government organizations that were not entitled to them.<sup>4</sup> Given the massive federal debt the nation faces, the Department of Defense should sell their new, unused, and excellent quality condition excess inventory to all interested parties, and not give quality equipment away to federal agencies, state, and local governments.

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Based on the GAO report, the Department of Defense gives away around \$75 million worth of equipment annually. Assuming a 33% resell rate for this equipment, changing the rules could bring into the Treasury over \$250 million over a ten-year period.

With the massive amount of spending on new equipment, supplies, and inventory for the wars in Iraq and Afghanistan, this number could be much higher.

The amendment adds a section of law to require that any new, unused, or high quality excess equipment that is not needed by another agency within the Department of Defense must be put up for public auction and awarded to the highest bidder.

### **There is already a mechanism in place for public sales of new, unused, or high quality excess inventory equipment**

The majority (>50%) of all new, unused, and excellent condition excess equipment, supplies, and inventory are already sold to the public.<sup>5</sup>

There would not need to be any additional mechanisms or costs in order for the sales to occur for federal agencies, state, and local governments.

The federal agencies, state, and local governments will not be precluded from obtaining excess equipment, supplies and inventory from the Department of Defense. They will still pay much less for this equipment than if they purchased it retail.

### **There are lax controls over whether the state and local governments are using the equipment as intended or if they are eligible**

In an investigation by GAO<sup>6</sup> of the University of Alabama at Huntsville, they found that the University had used an invalid activity code to obtain over \$3.5 million worth of excess DOD property to which it was not entitled.

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<sup>5</sup> GAO Report 05-729T, "DOD Excess Property: Management Control Breakdowns Result in Substantial Waste and Efficiency," Government Accountability Office, June 7, 2005, <http://www.gao.gov/new.items/d05729t.pdf>.

The activity code was associated with an expired contract and it had been deleted several years earlier. In addition, a Florida Army National Guard unit was able to obtain excess property between 1998 and 1999 by using an invalid activity code that had been deleted in 1990.

GAO determined that invalid codes had been used to obtain over \$101 million in excess equipment.

In another, more recent instance, the city of Henry, Tennessee was found to have applied to the Defense Reutilization and Marketing Service to obtain law enforcement equipment and signed an agreement to use it for that purpose only. When an audit was conducted however, the city had used the equipment for general city government instead.<sup>7</sup>

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<sup>7</sup> Tanner, Glenn, and Hays, Misty, "Henry TN: Misuse of military surplus alleged in City of Henry," The Paris Post-Intelligencer, May 12, 2010, [http://www.parispi.net/articles/2010/05/12/news/local\\_news/doc4bead9e24eee6848944888.txt](http://www.parispi.net/articles/2010/05/12/news/local_news/doc4bead9e24eee6848944888.txt)

## Henry TN: Misuse of military surplus alleged in audit of City of Henry

[http://www.parispi.net/articles/2010/05/12/news/local\\_news/doc4bead9e24eee6848944888.txt](http://www.parispi.net/articles/2010/05/12/news/local_news/doc4bead9e24eee6848944888.txt)

Henry's mayor and police chief say a state audit finding that military surplus equipment obtained by the police department was improperly used by the city is the result of a misunderstanding by auditors, and a delay in written permission from the state.

Meanwhile, the issue has caused hard feelings in Henry, with one alderman moving that the current chief be fired, and a former Henry police officer threatening a lawsuit against the city at Tuesday's meeting of the Henry Mayor and Board of Aldermen.

Since last fall, the city has been taking part in the U.S. Department of Defense's 1033 surplus property program, which allows law enforcement agencies to earmark surplus equipment for their own use.

The equipment is identified and "tagged" on a government Web site listing surplus equipment at military bases across the country.

Once requests are approved by state and federal administrators, county and municipal law enforcement agencies can obtain the equipment, sometimes costing hundreds of thousands of dollars, for the cost of transporting it.

According to a report by the state's Division of Municipal Audit, Police Chief Mark Herndon signed an agreement to only use the equipment for law enforcement purposes.

While conducting the special audit, which was initially requested by the City of Henry, state officials found that much of the equipment was instead being used by the city's general government.

Of the more than 50 items in surplus equipment obtained since August, only a printer in Herndon's office was being used strictly by the police department, according to the audit.

The report said “Public Works” signs had been placed on several vehicles, and Mayor Joe Qualls told auditors of several non-law enforcement projects he had originally planned to use the equipment for.

The audit also found that Herndon had used a city credit card to pay for a \$214 plane ticket for his wife while on a trip to Florida to pick up equipment from a military base there.

Herndon said in a recent interview that he was told by Elbert Baker, the state official administering the program, that auditors were mistaken in their interpretation of the agreement.

“We were doing what we were instructed to do,” Herndon said. “Some of the employees would use that for city business — that’s totally acceptable. The federal government expects you to do that.”

Herndon said he had an oral agreement with Baker that allowed the equipment to be used by the city.

“Every time I would use this for this or that, I would call Elbert,” Herndon said. “So we used everything according to Nashville and the federal government.”

Herndon and Qualls said Baker, after learning of the audit’s findings, agreed to send written permission for the city to use the items in question.

“The comptroller just wanted us to go by the letter of the law,” Qualls said. “Just get it in writing, and we’ll be cool. And we’re in that process now.”

Baker was contacted twice by The Post-Intelligencer to verify that permission was forthcoming.

He said he was unable to give immediate comment because he was occupied by other matters — chiefly the recent flooding across the state and in Nashville.

Herndon and Qualls said Herndon had repaid the cost of the plane ticket immediately after auditors told him it was improper.

“When the auditors told me you couldn’t do that, it was paid back instantly,” he said.

Herndon said buying the airline seat for his wife stemmed from an attempt at trying to save the city money as he tried to catch a last-minute flight to pick up equipment from a Florida military base.

Herndon said he had originally been given a price for one seat of \$1,100, but saw a special on two seats for \$427.

Rather than let the seat go to waste, he let his wife accompany him.

“Thank goodness she was there, because we couldn’t have gotten it back otherwise,” he said.

Qualls said the city wouldn’t get any more equipment until they get written permission from Baker.

“We may not do it anymore,” Qualls said. “At least until we get written permission from the state coordinator.”

Debate about the findings took up about 40 minutes of the hour-long meeting of the city’s board Tuesday night, after Alderman Michael Williams questioned Qualls’ knowledge of the matter.

The often-heated discussion culminated with a motion by Williams to fire Herndon as police chief.

The motion died for lack of a second.

Audience member Brenda Williams, who is Michael Williams’ wife, said she had been fired from her job as a Henry police officer for similar circumstances, and called for something to be done.

“They fired me over misuse of city equipment,” she said. “If you let him sit there and run here in that patrol car to McKenzie or wherever with his wife, I want it in writing that he’s off. I will sue this city.”

Herndon responded by telling her he had been working for the city for four years, and has not had write-ups for disciplinary actions in all that time.



Qualls said Herndon had made restitution, paying the city back for the airline seat, and that the matter with the city's use of the equipment would be cleared up once Baker sends the letter of permission.

"My opinion is this ain't the first time it's went on in the city," Michael Williams said. "Mark's the chief — he knows better than that."

"I didn't say it was right," Qualls replied.

Herndon said he did not have a copy of the travel policy, so he did not know he was doing anything wrong. "It's not breaking the law," he said. Williams replied by saying that Herndon misused city funds and asked who authorized Herndon's wife to go. Herndon said Qualls approved the request, but Qualls said he did not know of Herndon's wife going with him.