

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 538**

4 (By Senators Snyder, Unger, Barnes, Cole and Carmichael)

5 \_\_\_\_\_  
6 [Originating in the Committee on Government Organization;  
7 reported February 19, 2014.]

8 \_\_\_\_\_  
9 **FISCAL  
NOTE**

10 A BILL to amend and reenact §5A-3-37 of the Code of West Virginia,  
11 1931, as amended; and to amend and reenact §6-13-1 of said  
12 code, all relating to disabled veteran's preference  
13 eligibility in hiring for state civil service jobs; and  
14 resident vendor bidding on state contracts.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §5A-3-37 of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted; and that §6-13-1 of said code be amended  
18 and reenacted, all to read as follows:

19 **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

20 **ARTICLE 3. PURCHASING DIVISION.**

21 **§5A-3-37. Preference for resident vendors; preference for vendors**  
22 **employing state residents; preference for veteran**  
23 **residents; preference for disabled veteran residents;**  
24 **exceptions.**

25 (a) ~~Effective beginning July 1, 1992,~~ In any instance that a

1 purchase of commodities or printing by the director or by a state  
2 department is required under the provisions of this article to be  
3 made upon competitive bids, the successful bid shall be determined  
4 as provided in this section.

5 (b) The Secretary of the Department of ~~Revenue Administration~~  
6 shall ~~promulgate any~~ propose rules for legislative approval  
7 pursuant to the provisions of article three, chapter twenty-nine-a  
8 of this code, necessary to:

9 ~~(i)~~ (1) Determine that vendors have met the ~~residence~~  
10 residency requirements described in this section;

11 ~~(ii)~~ (2) Establish the procedure for vendors to certify the  
12 residency requirements at the time of submitting their bids;

13 ~~(iii)~~ (3) Establish a procedure to audit bids which make a  
14 claim for preference permitted by this section and to reject  
15 noncomplying bids; and

16 ~~(iv) otherwise~~ (4) Accomplish the objectives of this section.

17 (c) In prescribing the rules, the secretary shall use a strict  
18 construction of the ~~residence~~ residency requirements set forth in  
19 this section.

20 (d) For purposes of this section, a successful bid shall be  
21 determined and accepted as follows:

22 (1) From an individual resident vendor who has resided in West  
23 Virginia continuously for the four years immediately preceding the  
24 date on which the bid is submitted or from a partnership,  
25 association, corporation resident vendor, or from a corporation  
26 nonresident vendor which has an affiliate or subsidiary which

1 employs a minimum of one hundred state residents and which has  
2 maintained its headquarters or principal place of business within  
3 West Virginia continuously for four years immediately preceding the  
4 date on which the bid is submitted, if the vendor's bid does not  
5 exceed the lowest qualified bid from a nonresident vendor by more  
6 than two and one-half percent of the latter bid, and if the vendor  
7 has made written claim for the preference at the time the bid was  
8 submitted: *Provided*, That for purposes of this subdivision, any  
9 partnership, association or corporation resident vendor of this  
10 state, which does not meet the requirements of this subdivision  
11 solely because of the continuous four-year ~~residence~~ residency  
12 requirement, shall be considered to meet the requirement if at  
13 least eighty percent of the ownership interest of the resident  
14 vendor is held by another individual, partnership, association or  
15 corporation resident vendor who otherwise meets the requirements of  
16 this subdivision, including the continuous four-year residency  
17 requirement: *Provided, however*, That the Secretary of the  
18 Department of ~~Revenue~~ Administration shall promulgate rules  
19 relating to attribution of ownership among several resident vendors  
20 for purposes of determining the eighty percent ownership  
21 requirement; or

22 (2) From a resident vendor, if, for purposes of producing or  
23 distributing the commodities or completing the project which is the  
24 subject of the vendor's bid and continuously over the entire term  
25 of the project, on average at least seventy-five percent of the  
26 vendor's employees are residents of West Virginia who have resided

1 in the state continuously for the two immediately preceding years,  
2 and the vendor's bid does not exceed the lowest qualified bid from  
3 a nonresident vendor by more than two and one-half percent of the  
4 latter bid, and if the vendor has certified the residency  
5 requirements of this subdivision and made written claim for the  
6 preference, at the time the bid was submitted; or

7       (3) From a nonresident vendor, which employs a minimum of one  
8 hundred state residents or a nonresident vendor which has an  
9 affiliate or subsidiary which maintains its headquarters or  
10 principal place of business within West Virginia and which employs  
11 a minimum of one hundred state residents, if, for purposes of  
12 producing or distributing the commodities or completing the project  
13 which is the subject of the vendor's bid and continuously over the  
14 entire term of the project, on average at least seventy-five  
15 percent of the vendor's employees or the vendor's affiliate's or  
16 subsidiary's employees are residents of West Virginia who have  
17 resided in the state continuously for the two immediately preceding  
18 years and the vendor's bid does not exceed the lowest qualified bid  
19 from a nonresident vendor by more than two and one-half percent of  
20 the latter bid, and if the vendor has certified the residency  
21 requirements of this subdivision and made written claim for the  
22 preference, at the time the bid was submitted; or

23       (4) From a vendor who meets either the requirements of both  
24 subdivisions (1) and (2) of this subsection, or subdivisions (1)  
25 and (3) of this subsection, if the bid does not exceed the lowest  
26 qualified bid from a nonresident vendor by more than five percent

1 of the latter bid, and if the vendor has certified the residency  
2 requirements above and made written claim for the preference at the  
3 time the bid was submitted; or

4 (5) From an individual resident vendor who is a veteran of the  
5 United States Armed Forces, the Reserves or the National Guard and  
6 has resided in West Virginia continuously for the four years  
7 immediately preceding the date on which the bid is submitted, if  
8 the vendor's bid does not exceed the lowest qualified bid from a  
9 nonresident vendor by more than three and one-half percent of the  
10 latter bid, and if the vendor has made written claim for the  
11 preference at the time the bid was submitted; or

12 (6) From an individual resident vendor who is a disabled  
13 veteran, as defined in subsection (e) of this section, and has  
14 resided in West Virginia continuously for the four years  
15 immediately preceding the date on which the bid is submitted, if  
16 the vendor's bid does not exceed the lowest qualified bid from a  
17 nonresident vendor by more than four and one-half percent of the  
18 latter bid, and if the vendor has made written claim for the  
19 preference at the time the bid was submitted; or

20 ~~(6)~~ (7) From a resident vendor who is a veteran of the United  
21 States Armed Forces, the Reserves or the National Guard, if, for  
22 purposes of producing or distributing the commodities or completing  
23 the project which is the subject of the vendor's bid and  
24 continuously over the entire term of the project, on average at  
25 least seventy-five percent of the vendor's employees are residents  
26 of West Virginia who have resided in the state continuously for the

1 two immediately preceding years and the vendor's bid does not  
2 exceed the lowest qualified bid from a nonresident vendor by more  
3 than three and one-half percent of the latter bid, and if the  
4 vendor has certified the residency requirements of this subdivision  
5 and made written claim for the preference, at the time the bid was  
6 submitted; or

7 (8) From a resident vendor who is a disabled veteran, as  
8 defined in subsection (e) of this section, if, for purposes of  
9 producing or distributing the commodities or completing the project  
10 which is the subject of the vendor's bid and continuously over the  
11 entire term of the project, on average at least seventy-five  
12 percent of the vendor's employees are residents of West Virginia  
13 who have resided in the state continuously for the two immediately  
14 preceding years and the vendor's bid does not exceed the lowest  
15 qualified bid from a nonresident vendor by more than four and one-  
16 half percent of the latter bid, and if the vendor has certified the  
17 residency requirements of this subdivision and made written claim  
18 for the preference, at the time the bid was submitted; or

19 ~~(7)~~ (9) Notwithstanding any provisions of subdivisions (1),  
20 (2), (3), (4), (5), ~~or~~ (6), (7) or (8) of this subsection to the  
21 contrary, if any nonresident vendor that is bidding on the purchase  
22 of commodities or printing by the director or by a state department  
23 is also certified as a small, women or minority-owned business  
24 pursuant to section fifty-nine of this article, the nonresident  
25 vendor shall be provided the same preference made available to any  
26 resident vendor under the provisions of this subsection.

1        (e) For purposes of this section, "disabled veteran" means an  
2 individual who has served on active duty in the armed forces, has  
3 been separated therefrom under honorable conditions, and has  
4 established the present existence of a service-connected disability  
5 or is receiving compensation, disability retirement benefits, or  
6 pension because of a public statute administered by the Department  
7 of Veterans Affairs or a military department.

8        ~~(b)~~ (f) If the Secretary of the Department of ~~Revenue~~  
9 Administration determines under any audit procedure that a vendor  
10 who received a preference under this section fails to continue to  
11 meet the requirements for the preference at any time during the  
12 term of the project for which the preference was received the  
13 secretary may:

14        (1) Reject the vendor's bid; or

15        (2) Assess a penalty against the vendor of not more than five  
16 percent of the vendor's bid on the project.

17        ~~(c)~~ (g) Political subdivisions of the state including county  
18 boards of education may grant the same preferences to any vendor of  
19 this state who has made a written claim for the preference at the  
20 time a bid is submitted, but for the purposes of this subsection,  
21 in determining the lowest bid, any political subdivision shall  
22 exclude from the bid the amount of business occupation taxes which  
23 must be paid by a resident vendor to any municipality within the  
24 county comprising or located within the political subdivision as a  
25 result of being awarded the contract which is the object of the  
26 bid; in the case of a bid received by a municipality, the

1 municipality shall exclude only the business and occupation taxes  
2 as will be paid to the municipality: *Provided*, That prior to  
3 soliciting any competitive bids, any political subdivision may, by  
4 majority vote of all its members in a public meeting where all the  
5 votes are recorded, elect not to exclude from the bid the amount of  
6 business and occupation taxes as provided in this subsection.

7 ~~(d)~~ (h) If any of the requirements or provisions set forth in  
8 this section jeopardize the receipt of federal funds, then the  
9 requirement or provisions are void and of no force and effect for  
10 that specific project.

11 ~~(e)~~ (i) If any provision or clause of this section or  
12 application thereof to any person or circumstance is held invalid,  
13 the invalidity shall not affect other provisions or applications of  
14 this section which can be given effect without the invalid  
15 provision or application, and to this end the provisions of this  
16 section are severable.

17 ~~(f)~~ (j) This section may be cited as the "Jobs for West  
18 Virginians Act of 1990."

19 **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

20 **ARTICLE 13. PREFERENCE RATING OF VETERANS ON WRITTEN EXAMINATION**

21 **ON NONPARTISAN MERIT BASIS.**

22 **§6-13-1. Preference rating of veterans on written examinations for**  
23 **positions in state departments filled under**  
24 **nonpartisan merit system.**

25 (a) For positions in any agency, as defined in section four,



1 article one, chapter five-f of this code, or any other political  
2 subdivision of this state in which positions are filled under civil  
3 service or any job classification system, a preference of five  
4 points in addition to the regular numerical score received on  
5 examination shall be awarded to all veterans and disabled veterans  
6 having qualified for appointment by making a minimum passing grade;  
7 and to all veterans awarded the Purple Heart, or ~~having a~~  
8 ~~compensable service-connected disability, as established by any~~  
9 ~~proper veterans' bureau or department of the federal government~~  
10 disabled veterans, an additional five points shall be allowed.

11 (b) For purposes of this article, a person shall receive  
12 "disabled veteran" preference if he or she has served on active  
13 duty in the Armed Forces, has been separated therefrom under  
14 honorable conditions, and has established the present existence of  
15 a service-connected disability or is receiving compensation,  
16 disability retirement benefits, or pension because of a public  
17 statute administered by the Department of Veterans Affairs or a  
18 military department;

19 (c) For ~~the purpose~~ purposes of this article, a person is  
20 defined as a "veteran" if he or she fulfills the requirements of  
21 one of the following ~~subsections~~ subdivisions:

22 ~~(a)~~ (1) Served on active duty anytime between December 7,  
23 1941, and July 1, 1955. However, any person who was a reservist  
24 called to active duty between February 1, 1955, and October 14,  
25 1976, must meet ~~condition (b) stated below~~ subdivision (2) of this  
26 subsection;

1        ~~(b)~~ (2) Served on active duty anytime between July 2, 1955,  
2 and October 14, 1976, or a reservist called to active duty between  
3 February 1, 1955, and October 14, 1976, and who served for more  
4 than one hundred eighty days;

5        ~~(c)~~ (3) Entered on active duty between October 15, 1976, and  
6 September 7, 1980, or a reservist who entered on active duty  
7 between October 15, 1976, and October 13, 1982, and received a  
8 campaign badge or expeditionary medal; ~~or is a disabled veteran;~~ or

9        ~~(d)~~ (4) Enlisted in the Armed Forces after September 7, 1980,  
10 or entered active duty other than by enlistment on or after October  
11 14, 1982, and ~~(1)~~ completed twenty-four months of continuous active  
12 duty or the full period called or ordered to active duty, or was  
13 discharged under 10 U.S.C. 1171, or for hardship under 10 U.S.C.  
14 1173, and received or was entitled to receive a campaign badge or  
15 expeditionary medal. ~~or (2) Is a disabled veteran.~~

16        (d) To receive veteran preference, separation from active duty  
17 must have been under honorable conditions. This includes honorable  
18 and general discharges. A clemency discharge does not meet the  
19 requirements of the Veteran Preference Act. Active duty for  
20 training in the military reserve and National Guard programs is not  
21 considered active duty for purposes of veteran preference.

22        (e) These awards shall be made for the benefit and preference  
23 in appointment of all veterans who have heretofore or who shall  
24 hereafter take examinations, but shall not operate to the detriment  
25 of any person heretofore appointed to a position in a department or  
26 agency.