

Senate Bill No. 122

(By Senators Snyder, Facemire
and Romano)

[Introduced January 14, 2015;
referred to the Committee on Military;
and then to the Committee on
Government Organization.]

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

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; preference for veteran residents; preference for disabled veteran residents; exceptions.

1 (a) ~~Effective beginning July 1, 1992,~~ In any instance that a purchase of commodities or
2 printing by the director or by a state department is required under the provisions of this article to be

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1 made upon competitive bids, the successful bid shall be determined as provided in this section.

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

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

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

9 (iii) (3) Establish a procedure to audit bids which make a claim for preference permitted by
10 this section and to reject noncomplying bids; and

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

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

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

15 (1) From an individual resident vendor who has resided in West Virginia continuously for
16 the four years immediately preceding the date on which the bid is submitted or from a partnership,
17 association, corporation resident vendor, or from a corporation nonresident vendor which has an
18 affiliate or subsidiary which employs a minimum of one hundred state residents and which has
19 maintained its headquarters or principal place of business within West Virginia continuously for four
20 years immediately preceding the date on which the bid is submitted, if the vendor's bid does not
21 exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent
22 of the latter bid, and if the vendor has made written claim for the preference at the time the bid was

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1 submitted: *Provided*, That for purposes of this subdivision, any partnership, association or
2 corporation resident vendor of this state which does not meet the requirements of this subdivision
3 solely because of the continuous four-year ~~residence~~ residency requirement shall be considered to
4 meet the requirement if at least eighty percent of the ownership interest of the resident vendor is held
5 by another individual, partnership, association or corporation resident vendor who otherwise meets
6 the requirements of this subdivision, including the continuous four-year residency requirement:
7 *Provided, however*, That the Secretary of the Department of ~~Revenue~~ Administration shall
8 promulgate rules relating to attribution of ownership among several resident vendors for purposes
9 of determining the eighty percent ownership requirement; or

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

18 (3) From a nonresident vendor which employs a minimum of one hundred state residents or
19 a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or
20 principal place of business within West Virginia and which employs a minimum of one hundred state
21 residents if, for purposes of producing or distributing the commodities or completing the project
22 which is the subject of the vendor's bid and continuously over the entire term of the project, on

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1 average at least seventy-five percent of the vendor's employees or the vendor's affiliate's or
2 subsidiary's employees are residents of West Virginia who have resided in the state continuously for
3 the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid
4 from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor
5 has certified the residency requirements of this subdivision and made written claim for the preference
6 at the time the bid was submitted; or

7 (4) From a vendor who meets either the requirements of both subdivisions (1) and (2) of this
8 subsection, or subdivisions (1) and (3) of this subsection, if the bid does not exceed the lowest
9 qualified bid from a nonresident vendor by more than five percent of the latter bid, and if the vendor
10 has certified the residency requirements above and made written claim for the preference at the time
11 the bid was submitted; or

12 (5) From an individual resident vendor who is a veteran of the United States armed forces,
13 the reserve or the National Guard and has resided in West Virginia continuously for the four years
14 immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed
15 the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the
16 latter bid, and if the vendor has made written claim for the preference at the time the bid was
17 submitted; or

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

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1 ~~(6)~~ (7) From a resident vendor who is a veteran of the United States armed forces, the reserve
2 or the National Guard if, for purposes of producing or distributing the commodities or completing
3 the project which is the subject of the vendor's bid and continuously over the entire term of the
4 project, on average at least seventy-five percent of the vendor's employees are residents of West
5 Virginia who have resided in the state continuously for the two immediately preceding years and the
6 vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three
7 and one-half percent of the latter bid, and if the vendor has certified the residency requirements of
8 this subdivision and made written claim for the preference, at the time the bid was submitted; or

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

17 ~~(7)~~ (9) Notwithstanding any provisions of subdivision (1), (2), (3), (4), (5), ~~or~~ (6), (7) or (8)
18 of this subsection to the contrary, if any nonresident vendor that is bidding on the purchase of
19 commodities or printing by the director or by a state department is also certified as a small, women
20 or minority-owned business pursuant to section fifty-nine of this article, the nonresident vendor shall
21 be provided the same preference made available to any resident vendor under the provisions of this
22 subsection.

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

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

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

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

13 ~~(c)~~ (g) Political subdivisions of the state including county boards of education may grant the
14 same preferences to any vendor of this state who has made a written claim for the preference at the
15 time a bid is submitted, but for the purposes of this subsection, in determining the lowest bid, any
16 political subdivision shall exclude from the bid the amount of business occupation taxes which must
17 be paid by a resident vendor to any municipality within the county comprising or located within the
18 political subdivision as a result of being awarded the contract which is the object of the bid; in the
19 case of a bid received by a municipality, the municipality shall exclude only the business and
20 occupation taxes as will be paid to the municipality: *Provided*, That prior to soliciting any
21 competitive bids, any political subdivision may, by majority vote of all its members in a public
22 meeting where all the votes are recorded, elect not to exclude from the bid the amount of business

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1 and occupation taxes as provided in this subsection.

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

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

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

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

11 **ARTICLE 13. PREFERENCE RATING OF VETERANS ON WRITTEN EXAMINATION**
12 **ON NONPARTISAN MERIT BASIS.**

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

15 (a) For positions in any agency, as defined in section four, article one, chapter five-f of this
16 code, or any other political subdivision of this state in which positions are filled under civil service
17 or any job classification system, a preference of five points in addition to the regular numerical score
18 received on examination shall be awarded to all veterans and disabled veterans having qualified for
19 appointment by making a minimum passing grade; and to all veterans awarded the Purple Heart, or
20 ~~having a compensable service-connected disability, as established by any proper veterans' bureau or~~
21 ~~department of the federal government~~ disabled veterans, an additional five points shall be allowed.

22 (b) For purposes of this article, a person shall receive "disabled veteran" preference if he or

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1 she has served on active duty in the armed forces, has been separated therefrom under honorable
2 conditions, and has established the present existence of a service-connected disability or is receiving
3 compensation, disability retirement benefits, or pension because of a public statute administered by
4 the Department of Veterans Affairs or a military department;

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

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

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

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

16 (d) (4) Enlisted in the armed forces after September 7, 1980, or entered active duty other than
17 by enlistment on or after October 14, 1982, and ~~(1)~~ completed twenty-four months of continuous
18 active duty or the full period called or ordered to active duty, or was discharged under 10 U. S. C.
19 §1171, or for hardship under 10 U. S. C. §1173, and received or was entitled to receive a campaign
20 badge or expeditionary medal. ~~or (2) Is a disabled veteran.~~

21 (d) To receive veteran preference, separation from active duty must have been under
22 honorable conditions. This includes honorable and general discharges. A clemency discharge does

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1 not meet the requirements of the Veteran Preference Act. Active duty for training in the military
2 reserve and National Guard programs is not considered active duty for purposes of veteran
3 preference.

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

(NOTE: The purpose of this bill is to adopt the federal definition for disabled veterans' preference eligibility in hiring for state civil service jobs and resident vendor bidding on state contracts.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)