

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.