

Senate Bill No. 538

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

[Introduced February 11, 2014; referred to the Committee on Government Organization; and then to the Committee on Finance.]

**FISCAL
NOTE**

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 and resident vendor bidding on state contracts.

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;

1 **exceptions.**

2 (a) Effective beginning July 1, 1992, in any instance that a
3 purchase of commodities or printing by the director or by a state
4 department is required under the provisions of this article to be
5 made upon competitive bids, the successful bid shall be determined
6 as provided in this section. The Secretary of the Department of
7 Revenue shall promulgate any rules necessary to: (I) Determine
8 that vendors have met the residence requirements described in this
9 section; (ii) establish the procedure for vendors to certify the
10 residency requirements at the time of submitting their bids; (iii)
11 establish a procedure to audit bids which make a claim for
12 preference permitted by this section and to reject noncomplying
13 bids; and (iv) otherwise accomplish the objectives of this section.
14 In prescribing the rules, the secretary shall use a strict
15 construction of the residence requirements set forth in this
16 section. For purposes of this section, a successful bid shall be
17 determined and accepted as follows:

18 (1) From an individual resident vendor who has resided in West
19 Virginia continuously for the four years immediately preceding the
20 date on which the bid is submitted or from a partnership,
21 association, corporation resident vendor, or from a corporation
22 nonresident vendor which has an affiliate or subsidiary which
23 employs a minimum of one hundred state residents and which has
24 maintained its headquarters or principal place of business within

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

20 (2) From a resident vendor, if, for purposes of producing or
21 distributing the commodities or completing the project which is the
22 subject of the vendor's bid and continuously over the entire term
23 of the project, on average at least seventy-five percent of the
24 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) and

1 (3) of this subsection, if the bid does not exceed the lowest
2 qualified bid from a nonresident vendor by more than five percent
3 of the latter bid, and if the vendor has certified the residency
4 requirements above and made written claim for the preference at the
5 time the bid was submitted; or

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

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

22 ~~(6)~~ (7) From a resident vendor who is a veteran of the United
23 States Armed Forces, the Reserves or the National Guard, if, for
24 purposes of producing or distributing the commodities or completing

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

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

23 ~~(7)~~ (9) Notwithstanding any provisions of subdivisions (1),
24 (2), (3), (4), (5), ~~or~~ (6), (7) or (8) of this subsection to the

1 contrary, if any nonresident vendor that is bidding on the purchase
2 of commodities or printing by the director or by a state department
3 is also certified as a small, women or minority-owned business
4 pursuant to section fifty-nine of this article, the nonresident
5 vendor shall be provided the same preference made available to any
6 resident vendor under the provisions of this subsection.

7 (b) For purposes of this section, "disabled veteran" means an
8 individual who has served on active duty in the armed forces, has
9 been separated therefrom under honorable conditions, and had
10 established the present existence of a service-connected disability
11 or is receiving compensation, disability retirement benefits, or
12 pension because of a public statute administered by the Department
13 of Veterans Affairs or a military department.

14 ~~(b)~~ (c) If the Secretary of the Department of Revenue
15 determines under any audit procedure that a vendor who received a
16 preference under this section fails to continue to meet the
17 requirements for the preference at any time during the term of the
18 project for which the preference was received the secretary may:
19 (1) Reject the vendor's bid; or (2) assess a penalty against the
20 vendor of not more than five percent of the vendor's bid on the
21 project.

22 ~~(c)~~ (d) Political subdivisions of the state including county
23 boards of education may grant the same preferences to any vendor of
24 this state who has made a written claim for the preference at the

1 time a bid is submitted, but for the purposes of this subsection,
2 in determining the lowest bid, any political subdivision shall
3 exclude from the bid the amount of business occupation taxes which
4 must be paid by a resident vendor to any municipality within the
5 county comprising or located within the political subdivision as a
6 result of being awarded the contract which is the object of the
7 bid; in the case of a bid received by a municipality, the
8 municipality shall exclude only the business and occupation taxes
9 as will be paid to the municipality: *Provided*, That prior to
10 soliciting any competitive bids, any political subdivision may, by
11 majority vote of all its members in a public meeting where all the
12 votes are recorded, elect not to exclude from the bid the amount of
13 business and occupation taxes as provided in this subsection.

14 ~~(d)~~ (e) If any of the requirements or provisions set forth in
15 this section jeopardize the receipt of federal funds, then the
16 requirement or provisions are void and of no force and effect for
17 that specific project.

18 ~~(e)~~ (f) If any provision or clause of this section or
19 application thereof to any person or circumstance is held invalid,
20 the invalidity shall not affect other provisions or applications of
21 this section which can be given effect without the invalid
22 provision or application, and to this end the provisions of this
23 section are severable.

24 ~~(f)~~ (g) This section may be cited as the "Jobs for West

1 Virginians Act of 1990.”

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

3 **ARTICLE 13. PREFERENCE RATING OF VETERANS ON WRITTEN EXAMINATION**
4 **ON NONPARTISAN MERIT BASIS.**

5 **§6-13-1. Preference rating of veterans on written examinations for**
6 **positions in state departments filled under**
7 **nonpartisan merit system.**

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

19 (a) For purposes of this article, a person shall receive
20 "disabled veteran" preference if he or she has served on active
21 duty in the Armed Forces, has been separated therefrom under
22 honorable conditions, and had established the present existence of
23 a service-connected disability or is receiving compensation,

1 disability retirement benefits, or pension because of a public
2 statute administered by the Department of Veterans Affairs or a
3 military department;

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

7 ~~(a)~~ (1) Served on active duty anytime between December 7,
8 1941, and July 1, 1955. However, any person who was a reservist
9 called to active duty between February 1, 1955, and October 14,
10 1976, must meet condition (b) stated below;

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

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

19 ~~(d)~~ (4) Enlisted in the Armed Forces after September 7, 1980,
20 or entered active duty other than by enlistment on or after October
21 14, 1982, and ~~(1)~~ completed twenty-four months of continuous active
22 duty or the full period called or ordered to active duty, or was
23 discharged under 10 U.S.C. 1171, or for hardship under 10 U.S.C.
24 1173, and received or was entitled to receive a campaign badge or

1 expeditionary medal; or ~~(2) Is a disabled veteran.~~

2 To receive veteran preference, separation from active duty
3 must have been under honorable conditions. This includes honorable
4 and general discharges. A clemency discharge does not meet the
5 requirements of the Veteran Preference Act. Active duty for
6 training in the military reserve and National Guard programs is not
7 considered active duty for purposes of veteran preference.

8 These awards shall be made for the benefit and preference in
9 appointment of all veterans who have heretofore or who shall
10 hereafter take examinations, but shall not operate to the detriment
11 of any person heretofore appointed to a position in a department or
12 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.