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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

HOUSE BILL No. 4585

(By Delegates Howe and Burk)



Passed March 6, 1992

In Effect From Passage

ENROLLED

H. B. 4585

(By DELEGATES HOUVOURAS AND BURK)

[Passed March 6, 1992; in effect from passage.]

AN ACT to amend and reenact section thirty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a preference for resident vendors of commodities to the state.

Be it enacted by the Legislature of West Virginia:

That section thirty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

1 (a) Other provisions of this article notwithstanding,
2 effective the first day of July, one thousand nine
3 hundred ninety, through the thirtieth day of June, one
4 thousand nine hundred ninety-four, in any instance
5 involving the purchase of construction services or for the
6 construction, repair or improvement of any buildings or
7 portions thereof, where the total aggregate cost thereof,
8 whether one or a series of contracts are awarded in
9 completing the project, is estimated by the director to
10 exceed the sum of fifty thousand dollars, and where the
11 director or any state department is required under the
12 provisions of this article to make such purchase,
13 construction, repair or improvement upon competitive

14 bids, the successful bid shall be determined as provided
15 in this section. Effective beginning the first day of July,
16 one thousand nine hundred ninety-two, in any instance
17 that a purchase of commodities or printing by the
18 director or by a state department is required under the
19 provisions of this article to be made upon competitive
20 bids, the successful bid shall be determined as provided
21 in this section. The secretary of the department of tax
22 and revenue shall promulgate such rules and regula-
23 tions necessary to (i) determine that vendors have met
24 the residence requirements described in this section; (ii)
25 establish the procedure for vendors to certify such
26 residency requirements at the time of submitting their
27 bids; (iii) establish a procedure to audit bids which make
28 a claim for preference permitted by this section and to
29 reject noncomplying bids; and (iv) otherwise accomplish
30 the objectives of this section. In prescribing such rules
31 and regulations, the secretary shall use a strict construc-
32 tion of the residence requirements set forth in this
33 section. For purposes of this section, a successful bid
34 shall be determined and accepted as follows:

35 (1) From an individual resident vendor who has
36 resided in West Virginia continuously for the four years
37 immediately preceding the date on which the bid is
38 submitted or from a partnership, association or corpo-
39 ration resident vendor which has maintained its
40 headquarters or principal place of business within West
41 Virginia continuously for four years immediately
42 preceding the date on which the bid is submitted, if such
43 resident vendor's bid does not exceed the lowest
44 qualified bid from a nonresident vendor by more than
45 two and one-half percent of the latter bid, and if such
46 resident vendor has made written claim for such
47 preference at the time the bid was submitted: *Provided,*
48 That for purposes of this subparagraph (1), any partner-
49 ship, association or corporation resident vendor of this
50 state, which does not meet the requirements of this
51 subparagraph solely because of the continuous four-year
52 residence requirement, shall be deemed to meet such
53 requirement if at least eighty percent of the ownership
54 interest of such resident vendor is held by another
55 individual, partnership, association or corporation

56 resident vendor who otherwise meets the requirements
57 of this subparagraph, including the continuous four-year
58 residency requirement: *Provided, however,* That the
59 secretary of the department of tax and revenue shall
60 promulgate rules and regulations relating to attribution
61 of ownership among several such resident vendors for
62 purposes of determining the eighty percent ownership
63 requirement; or

64 (2) From a resident or nonresident vendor, if, for
65 purposes of producing or distributing the commodities
66 or completing the project which is the subject of such
67 vendor's bid and continuously over the entire term of
68 such project, on average at least sixty percent of such
69 vendor's employees are residents of West Virginia who
70 have resided in the state continuously for the two
71 immediately preceding years and such vendor's bid does
72 not exceed the lowest qualified bid from a nonresident
73 vendor by more than two and one-half percent of the
74 latter bid, and if such vendor has certified the residency
75 requirements above and made written claim for such
76 preference, at the time the bid was submitted; or

77 (3) From a vendor who meets the requirements of
78 both subparagraphs (1) and (2) set forth above, if such
79 bid does not exceed the lowest qualified bid from a
80 nonresident vendor by more than five percent of the
81 latter bid, and if such resident vendor has certified the
82 residency requirements above and made written claim
83 for such preference at the time the bid was submitted.

84 (b) If the secretary of the department of tax and
85 revenue determines under any audit procedure that a
86 vendor who received a preference under this section
87 fails to continue to meet the requirements for such
88 preference at any time during the term of the project
89 for which such preference was received the secretary
90 may: (1) Reject such vendor's bid; or (2) assess a penalty
91 against such vendor of not more than five percent of
92 such vendor's bid on the project.

93 (c) Political subdivisions of the state including county
94 boards of education may grant the same preferences to
95 any vendor of this state who has made a written claim

96 for such preference at the time a bid is submitted, but
97 for the purposes of this subsection, in determining the
98 lowest bid, any political subdivision shall exclude from
99 the bid the amount of business occupation taxes which
100 must be paid by a resident vendor to any municipality
101 within the county comprising or located within such
102 subdivision as a result of being awarded the contract
103 which is the object of the bid; in the case of a bid
104 received by a municipality, the municipality shall
105 exclude only such business and occupation taxes as will
106 be paid to such municipality: *Provided*, That prior to
107 soliciting any such competitive bids, any such political
108 subdivision may, by majority vote of all its members in
109 a public meeting where all such votes shall be recorded,
110 elect not to exclude from the bid the amount of business
111 and occupation taxes as provided herein.

112 (d) If any of the requirements or provisions set forth
113 in this section jeopardize the receipt of federal funds,
114 then such requirement or provisions shall be void and
115 of no force and effect for that specific project.

116 (e) If any provision or clause of this section or
117 application thereof to any person or circumstance is held
118 invalid, such invalidity shall not affect other provisions
119 or applications of this section which can be given effect
120 without the invalid provision or application, and to this
121 end the provisions of this section are declared to be
122 severable.

123 (f) This section may be cited as the "Jobs for West
124 Virginians Act of 1990."

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James Leck
.....
Chairman Senate Committee

Ernest C Moore
.....
Chairman House Committee

Originating in the House.

Takes effect from passage.

David E Adams
.....
Clerk of the Senate

Donald D Kopp
.....
Clerk of the House of Delegates

Walter Burdette
.....
President of the Senate

Robert C. Bell
.....
Speaker of the House of Delegates

The within *is approved* this the *15th*
day of *April*, 1992.

Yaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/16/92

Time 9:20 am