

HB 4283 S

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



ENROLLED

House Bill No. 4283

(By Mr. Speaker, (Mr. Kiss) and Delegates DeLong,
Argento, Amores, Caputo, Beach, Perry and Michael)



Passed March 11, 2006

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 4283

(BY MR. SPEAKER, (MR. KISS) AND DELEGATES DELONG,
ARGENTO, AMORES, CAPUTO, BEACH, PERRY AND MICHAEL)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §5A-3-37 of the Code of West Virginia, 1931, as amended, relating to providing a preference to West Virginia veterans in the awarding of state contracts in the competitive bidding process.

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 to read as follows:

ARTICLE 3. PURCHASING DIVISION.

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

1 (a) Other provisions of this article notwithstanding,
2 effective the first day of July, one thousand nine hundred
3 ninety, through the thirtieth day of June, one thousand nine
4 hundred ninety-four, in any instance involving the purchase of

5 construction services for the construction, repair or improve-
6 ment of any buildings or portions thereof, where the total
7 aggregate cost thereof, whether one or a series of contracts are
8 awarded in completing the project, is estimated by the director
9 to exceed the sum of fifty thousand dollars and where the
10 director or any state department is required under the provisions
11 of this article to make the purchase, construction, repair or
12 improvement upon competitive bids, the successful bid shall be
13 determined as provided in this section. Effective beginning the
14 first day of July, one thousand nine hundred ninety-two, in any
15 instance that a purchase of commodities or printing by the
16 director or by a state department is required under the provi-
17 sions of this article to be made upon competitive bids, the
18 successful bid shall be determined as provided in this section.
19 The Secretary of the Department of Revenue shall promulgate
20 any rules necessary to: (i) Determine that vendors have met the
21 residence requirements described in this section; (ii) establish
22 the procedure for vendors to certify the residency requirements
23 at the time of submitting their bids; (iii) establish a procedure
24 to audit bids which make a claim for preference permitted by
25 this section and to reject noncomplying bids; and (iv) otherwise
26 accomplish the objectives of this section. In prescribing the
27 rules, the secretary shall use a strict construction of the resi-
28 dence requirements set forth in this section. For purposes of this
29 section, a successful bid shall be determined and accepted as
30 follows:

31 (1) From an individual resident vendor who has resided in
32 West Virginia continuously for the four years immediately
33 preceding the date on which the bid is submitted or from a
34 partnership, association, corporation resident vendor, or from
35 a corporation nonresident vendor which has an affiliate or
36 subsidiary which employs a minimum of one hundred state
37 residents and which has maintained its headquarters or principal
38 place of business within West Virginia continuously for four
39 years immediately preceding the date on which the bid is

40 submitted, if the vendor's bid does not exceed the lowest
41 qualified bid from a nonresident vendor by more than two and
42 one-half percent of the latter bid, and if the vendor has made
43 written claim for the preference at the time the bid was submit-
44 ted: *Provided*, That for purposes of this subdivision, any
45 partnership, association or corporation resident vendor of this
46 state, which does not meet the requirements of this subdivision
47 solely because of the continuous four-year residence require-
48 ment, shall be considered to meet the requirement if at least
49 eighty percent of the ownership interest of the resident vendor
50 is held by another individual, partnership, association or
51 corporation resident vendor who otherwise meets the require-
52 ments of this subdivision, including the continuous four-year
53 residency requirement: *Provided, however*, That the Secretary
54 of the Department of Revenue shall promulgate rules relating
55 to attribution of ownership among several resident vendors for
56 purposes of determining the eighty percent ownership require-
57 ment; or

58 (2) From a resident vendor, if, for purposes of producing or
59 distributing the commodities or completing the project which
60 is the subject of the vendor's bid and continuously over the
61 entire term of the project, on average at least seventy-five
62 percent of the vendor's employees are residents of West
63 Virginia who have resided in the state continuously for the two
64 immediately preceding years and the vendor's bid does not
65 exceed the lowest qualified bid from a nonresident vendor by
66 more than two and one-half percent of the latter bid, and if the
67 vendor has certified the residency requirements of this subdivi-
68 sion and made written claim for the preference, at the time the
69 bid was submitted; or

70 (3) From a nonresident vendor, which employs a minimum
71 of one hundred state residents or a nonresident vendor which
72 has an affiliate or subsidiary which maintains its headquarters
73 or principle place of business within West Virginia and which

74 employs a minimum of one hundred state residents, if, for
75 purposes of producing or distributing the commodities or
76 completing the project which is the subject of the vendor's bid
77 and continuously over the entire term of the project, on average
78 at least seventy-five percent of the vendor's employees or the
79 vendor's affiliate's or subsidiary's employees are residents of
80 West Virginia who have resided in the state continuously for
81 the two immediately preceding years and the vendor's bid does
82 not exceed the lowest qualified bid from a nonresident vendor
83 by more than two and one-half percent of the latter bid, and if
84 the vendor has certified the residency requirements of this
85 subdivision and made written claim for the preference, at the
86 time the bid was submitted; or

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

94 (5) From an individual resident vendor who is a veteran of
95 the United States armed forces, the reserves or the National
96 Guard and has resided in West Virginia continuously for the
97 four years immediately preceding the date on which the bid is
98 submitted, if the vendor's bid does not exceed the lowest
99 qualified bid from a nonresident vendor by more than three and
100 one-half percent of the latter bid, and if the vendor has made
101 written claim for the preference at the time the bid was submit-
102 ted; or

103 (6) From a resident vendor who is a veteran of the United
104 States armed forces, the reserves or the National Guard, if, for
105 purposes of producing or distributing the commodities or
106 completing the project which is the subject of the vendor's bid

107 and continuously over the entire term of the project, on average
108 at least seventy-five percent of the vendor's employees are
109 residents of West Virginia who have resided in the state
110 continuously for the two immediately preceding years and the
111 vendor's bid does not exceed the lowest qualified bid from a
112 nonresident vendor by more than three and one-half percent of
113 the latter bid, and if the vendor has certified the residency
114 requirements of this subdivision and made written claim for the
115 preference, at the time the bid was submitted.

116 (b) If the Secretary of the Department of Revenue deter-
117 mines under any audit procedure that a vendor who received a
118 preference under this section fails to continue to meet the
119 requirements for the preference at any time during the term of
120 the project for which the preference was received the secretary
121 may: (1) Reject the vendor's bid; or (2) assess a penalty against
122 the vendor of not more than five percent of the vendor's bid on
123 the project.

124 (c) Political subdivisions of the state including county
125 boards of education may grant the same preferences to any
126 vendor of this state who has made a written claim for the
127 preference at the time a bid is submitted, but for the purposes of
128 this subsection, in determining the lowest bid, any political
129 subdivision shall exclude from the bid the amount of business
130 occupation taxes which must be paid by a resident vendor to
131 any municipality within the county comprising or located
132 within the political subdivision as a result of being awarded the
133 contract which is the object of the bid; in the case of a bid
134 received by a municipality, the municipality shall exclude only
135 the business and occupation taxes as will be paid to the munic-
136 ipality: *Provided*, That prior to soliciting any competitive bids,
137 any political subdivision may, by majority vote of all its
138 members in a public meeting where all the votes are recorded,
139 elect not to exclude from the bid the amount of business and
140 occupation taxes as provided in this subsection.

141 (d) If any of the requirements or provisions set forth in this
142 section jeopardize the receipt of federal funds, then the require-
143 ment or provisions are void and of no force and effect for that
144 specific project.

145 (e) If any provision or clause of this section or application
146 thereof to any person or circumstance is held invalid, the
147 invalidity shall not affect other provisions or applications of this
148 section which can be given effect without the invalid provision
149 or application, and to this end the provisions of this section are
150 severable.

151 (f) This section may be cited as the "Jobs for West Virgin-
152 ians Act of 1990."

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



Chairman Senate Committee



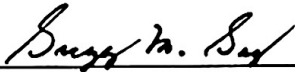
Chairman House Committee

Originating in the House.

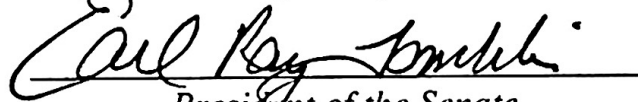
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

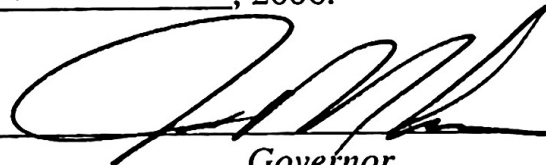


President of the Senate



Speaker of the House of Delegates

The within is approved this the 31st
day of March, 2006.



Governor

PRESENTED TO THE
GOVERNOR

MAR 3 0 2006

Time 2:55 pm