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OFFICE OF THE GOVERNOR

Date 6-14-83

**WEST VIRGINIA LEGISLATURE**

FIRST EXTRAORDINARY SESSION, 1983

**ENROLLED**

*Committee Substitute for*

**HOUSE BILL No. 106**

(By Mr. *Speaker, Mr. Lee*)

OFFICE  
SECRETARY OF STATE

83 JUN 14 P 3:42

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Passed May 31, 1983

In Effect - from - Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**H. B. 106**

(By MR. SPEAKER, MR. SEE, by request of the Executive)

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[Passed May 31, 1983; in effect from passage.]

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AN ACT to amend and reenact section forty-four, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to temporarily increasing and expanding the preference for resident vendors of this state doing business with the state, its political subdivisions including county boards of education; providing for the exclusion of business and occupation taxes in certain cases to determine the lowest bid; defining resident vendor; requiring a percentage of nonmanagement employees on certain public improvement projects to be state residents; exceptions.

*Be it enacted by the Legislature of West Virginia:*

That section forty-four, 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:

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-44. Preference for resident vendors; preference for state residents for nonmanagement employment in public improvement projects; exceptions.**

1 Other provisions of this article notwithstanding, in any

2 instance that a purchase of commodities or printing by the  
 3 director or by a state department is required under the  
 4 provisions of this article to be made upon competitive bids,  
 5 such purchase shall be made from a vendor resident in West  
 6 Virginia, if such bid does not exceed the lowest qualified bid  
 7 from a nonresident vendor by more than two percent of  
 8 the latter bid, and if such resident vendor has made written  
 9 claim for such preference at the time the bid was submitted:  
 10 *Provided*, That from the effective date of this section, through  
 11 the thirty-first day of December, one thousand nine hundred  
 12 eighty-four, such preferences for a resident vendor shall be  
 13 no more than five percent above the lowest qualified bid  
 14 from a nonresident bidder: *Provided, however*, That such  
 15 temporarily increased preferences shall apply to vendors doing  
 16 business with the commissioner of highways including con-  
 17 tracts awarded pursuant to the provisions of article four,  
 18 chapter seventeen of this code only where the purchase is  
 19 made exclusively from state funds: *Provided further*, That  
 20 political subdivisions of the state including county boards of  
 21 education may grant the same preferences to any resident  
 22 vendor of this state who has made a written claim for such  
 23 preference at the time a bid is submitted, but for the purposes  
 24 of this proviso, in determining the lowest bid, any political  
 25 subdivision shall exclude from the bid the amount of business *and*  
 26 occupation taxes which must be paid by a resident vendor  
 27 to any municipality within the county comprising or located  
 28 within such subdivision as a result of being awarded the con-  
 29 tract which is the object of the bid; in the case of a bid re-  
 30 ceived by a municipality, the municipality shall exclude only  
 31 such business and occupation taxes as will be paid to such  
 32 municipality: *And Provided further*, That prior to soliciting  
 33 any such competitive bids, any such political subdivision may,  
 34 by majority vote of all its members in a public meeting where  
 35 all such votes shall be recorded, elect not to exclude from  
 36 the bid the amount of business and occupation taxes as pro-  
 37 vided herein.

38 A vendor shall be deemed to be a resident of this state if  
 39 such vendor is an individual, partnership, association or cor-  
 40 poration in good standing under the laws of the state of West  
 41 Virginia who (1) is a resident of the state or a foreign corpora-

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42 tion authorized to transact business in the state; (2) main-  
43 tains an office in the state; (3) has paid personal property  
44 taxes pursuant to article five, chapter eleven of this code on  
45 equipment used in the regular course of supplying services  
46 of the general type offered; and (4) has paid business and  
47 occupation taxes pursuant to article thirteen, chapter eleven  
48 of this code. In addition, in the case of a vendor selling  
49 tangible personal property, a resident vendor is one who has a  
50 stock of materials held in West Virginia for sale in the ordinary  
51 course of business, which stock is of the general type offered,  
52 and which is reasonably sufficient in quantity to meet the  
53 ordinary requirements of customers.

54 From the effective date of this section, through the thirty-  
55 first day of December, one thousand nine hundred eighty-  
56 four, whenever a contract is awarded pursuant to a bid on the  
57 construction of a public improvement, the contract executed  
58 between the public authority and the successful bidder shall  
59 contain a provision setting forth that more than fifty percent  
60 of the nonmanagement personnel employed by the successful  
61 bidder and by each of his subcontractors for work performed  
62 on the project within the state shall be residents of the state of  
63 West Virginia who resided in the state on the date the contract  
64 bids are opened: *Provided*, That for purposes of this paragraph  
65 the term "construction," "public improvement" and "public  
66 authority" shall be defined in accordance with definitions set  
67 forth for those terms under the provisions of section one,  
68 article five-a, chapter twenty-one of this code: *Provided, how-*  
69 *ever*, That such provision shall be included in contracts be-  
70 tween the commissioner of highways and a successful bidder,  
71 including any such contracts awarded pursuant to the pro-  
72 visions of article four, chapter seventeen of this code, only  
73 when the contract amount is to be paid exclusively from state  
74 funds.

75 If any of the requirements or provisions set forth in this  
76 section jeopardize the receipt of federal funds, then such  
77 requirement or provisions shall be void and of no force and  
78 effect for that specific public improvement project.

79 If any provision or clause of this section or application  
80 thereof to any person or circumstance is held invalid, such

81 invalidity shall not affect other provisions or applications of  
82 this section which can be given effect without the invalid  
83 provision or application, and to this end the provisions of  
84 this section are declared to be severable.

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

James L. Davis  
Chairman Senate Committee

Donald Anello  
Chairman House Committee

Originating in the House.

Takes effect from passage.

Todd C. Withers  
Clerk of the Senate

Donald L. Stopp  
Clerk of the House of Delegates  
Walter P. McAraw  
President of the Senate

William M. Lee, Jr.  
Speaker House of Delegates

The within is approved this the 14  
day of June, 1983.

Philip D. Doyle  
Governor