WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1983

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ENROLLED
Committee Substitute for
HOUSE BILL No. 106

(By Mr. Speaker, Mr. Lee)

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Passed May 31, 1983

In Effect from Passage
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
instance that a purchase of commodities or printing by the
director or by a state department is required under the
provisions of this article to be made upon competitive bids,
such purchase shall be made from a vendor resident in West
Virginia, if such bid does not exceed the lowest qualified bid
from a nonresident vendor by more than two percent of
the latter bid, and if such resident vendor has made written
claim for such preference at the time the bid was submitted:
Provided, That from the effective date of this section, through
the thirty-first day of December, one thousand nine hundred
eighty-four, such preferences for a resident vendor shall be
no more than five percent above the lowest qualified bid
from a nonresident bidder: Provided, however, That such
temporarily increased preferences shall apply to vendors doing
business with the commissioner of highways including con-
tracts awarded pursuant to the provisions of article four,
chapter seventeen of this code only where the purchase is
made exclusively from state funds: Provided further, That such
political subdivisions of the state including county boards of
education may grant the same preferences to any resident
vendor of this state who has made a written claim for such
preference at the time a bid is submitted, but for the purposes
of this proviso, in determining the lowest bid, any political
subdivision shall exclude from the bid the amount of business
occupation taxes which must be paid by a resident vendor
to any municipality within the county comprising or located
within such subdivision as a result of being awarded the con-
tract which is the object of the bid; in the case of a bid re-
ceived by a municipality, the municipality shall exclude only
such business and occupation taxes as will be paid to such
municipality: And Provided further, That prior to soliciting
any such competitive bids, any such political subdivision may,
by majority vote of all its members in a public meeting where
all such votes shall be recorded, elect not to exclude from
the bid the amount of business and occupation taxes as pro-
vided herein.

A vendor shall be deemed to be a resident of this state if
such vendor is an individual, partnership, association or cor-
poration in good standing under the laws of the state of West
Virginia who (1) is a resident of the state or a foreign corpora-
tion authorized to transact business in the state; (2) maintains an office in the state; (3) has paid personal property taxes pursuant to article five, chapter eleven of this code on equipment used in the regular course of supplying services of the general type offered; and (4) has paid business and occupation taxes pursuant to article thirteen, chapter eleven of this code. In addition, in the case of a vendor selling tangible personal property, a resident vendor is one who has a stock of materials held in West Virginia for sale in the ordinary course of business, which stock is of the general type offered, and which is reasonably sufficient in quantity to meet the ordinary requirements of customers.

From the effective date of this section, through the thirty-first day of December, one thousand nine hundred eighty-four, whenever a contract is awarded pursuant to a bid on the construction of a public improvement, the contract executed between the public authority and the successful bidder shall contain a provision setting forth that more than fifty percent of the nonmanagement personnel employed by the successful bidder and by each of his subcontractors for work performed on the project within the state shall be residents of the state of West Virginia who resided in the state on the date the contract bids are opened: Provided, That for purposes of this paragraph the term "construction," "public improvement" and "public authority" shall be defined in accordance with definitions set forth for those terms under the provisions of section one, article five-a, chapter twenty-one of this code: Provided, however, That such provision shall be included in contracts between the commissioner of highways and a successful bidder, including any such contracts awarded pursuant to the provisions of article four, chapter seventeen of this code, only when the contract amount is to be paid exclusively from state funds.

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

If any provision or clause of this section or application thereof to any person or circumstance is held invalid, such
in invalidity shall not affect other provisions or applications of
this section which can be given effect without the invalid
provision or application, and to this end the provisions of
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 Cnellos  
Chairman House Committee

Originating in the House.

Takes effect from passage.

J. H. Watts  
Clerk of the Senate

Donald L. Hooper  
Clerk of the House of Delegates

Warren McQuary  
President of the Senate

W. E. Becher, Jr.  
Speaker House of Delegates

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

J. D. Vance  
Governor