WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED

HOUSE BILL No. 4585

(By Delegates Holmwood 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, effective the first day of July, one thousand nine hundred ninety, through the thirtieth day of June, one thousand nine hundred ninety-four, in any instance involving the purchase of construction services or for the construction, repair or improvement of any buildings or portions thereof, where the total aggregate cost thereof, whether one or a series of contracts are awarded in completing the project, is estimated by the director to exceed the sum of fifty thousand dollars, and where the director or any state department is required under the provisions of this article to make such purchase, construction, repair or improvement upon competitive
bids, the successful bid shall be determined as provided in this section. Effective beginning the first day of July, one thousand nine hundred ninety-two, 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, the successful bid shall be determined as provided in this section. The secretary of the department of tax and revenue shall promulgate such rules and regulations necessary to (i) determine that vendors have met the residence requirements described in this section; (ii) establish the procedure for vendors to certify such residency requirements at the time of submitting their bids; (iii) establish a procedure to audit bids which make a claim for preference permitted by this section and to reject noncomplying bids; and (iv) otherwise accomplish the objectives of this section. In prescribing such rules and regulations, the secretary shall use a strict construction of the residence requirements set forth in this section. For purposes of this section, a successful bid shall be determined and accepted as follows:

(1) From an individual resident vendor who has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted or from a partnership, association or corporation resident vendor which has maintained its headquarters or principal place of business within West Virginia continuously for four years immediately preceding the date on which the bid is submitted, if such resident vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half 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 for purposes of this subparagraph (1), any partnership, association or corporation resident vendor of this state, which does not meet the requirements of this subparagraph solely because of the continuous four-year residence requirement, shall be deemed to meet such requirement if at least eighty percent of the ownership interest of such resident vendor is held by another individual, partnership, association or corporation
resident vendor who otherwise meets the requirements of this subparagraph, including the continuous four-year residency requirement: Provided, however, That the secretary of the department of tax and revenue shall promulgate rules and regulations relating to attribution of ownership among several such resident vendors for purposes of determining the eighty percent ownership requirement; or

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

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

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

(c) Political subdivisions of the state including county boards of education may grant the same preferences to any 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 subsection, 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 contract
which is the object of the bid; in the case of a bid
received by a municipality, the municipality shall
exclude only such business and occupation taxes as will
be paid to such municipality: Provided, 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 provided herein.

(d) 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 project.

(e) If any provision or clause of this section or
application thereof to any person or circumstance is held
invalid, such 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.

(f) This section may be cited as the “Jobs for West
Virginians Act of 1990.”
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect 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 15th day of April, 1992.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/6/92
Time 9:00 AM