WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

Committee Substitute for
SENATE BILL NO. 568

(By Senator Anderson)

PASSED April 10, 1993
In Effect 90 days 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 purchasing by the state generally; preference for resident vendors; including corporation nonresident vendors which have an affiliate or subsidiary in this state which employ a minimum of one hundred state residents as being eligible for the resident vendor preference which is based on the vendor having its principal place of business or headquarters in West Virginia; increasing from sixty percent to seventy-five percent the number of resident employees required for a resident vendor to qualify for the vendor preference based on the number of West Virginia residents employed by the vendor; allowing a nonresident corporation employing at least one hundred employees in the state or a nonresident corporation whose affiliate or subsidiary employs at least one hundred employees in this state to qualify for a vendor preference if seventy-five percent of its employees are state residents; and including corporation nonresident vendors which have
an affiliate or a subsidiary in this state within the preference.

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:

ARTICLE 3. PURCHASING DIVISION.

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

(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 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 the 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 any 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 the 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 the 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, corporation resident vendor, or from a corporation nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and 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 the 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 the vendor has made written claim for the preference at the time the bid was submitted: Provided, That for purposes of this subdivision, any partnership, association or corporation resident vendor of this state, which does not meet the requirements of this subdivision solely because of the continuous four-year residence requirement, shall be considered to meet the requirement if at least eighty percent of the ownership interest of the resident vendor is held by another individual, partnership, association or corporation resident vendor who otherwise meets the requirements of this subdivision, 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 resident vendors for purposes of determining the eighty percent ownership requirement; or

(2) From a resident vendor, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid
and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the 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 the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted; or

(3) From a nonresident vendor, which employs a minimum of one hundred state residents or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principle place of business within West Virginia and which employs a minimum of one hundred state residents, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees or the vendor's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the 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 the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted; or

(4) From a vendor who meets either the requirements of both subdivisions (1) and (2) of this subsection or subdivisions (1) and (3) of this subsection, if the bid does not exceed the lowest qualified bid from a nonresident vendor by more than five percent of the latter bid, and if the vendor has certified the residency requirements above and made written claim for the 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 the
preference at any time during the term of the project
for which the preference was received the secretary
may: (1) Reject the vendor's bid; or (2) assess a penalty
against the vendor of not more than five percent of
the 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 the 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
to any municipality within the county comprising
or located within the political 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 the
business and occupation taxes as will be paid to the
municipality: Provided, That prior to soliciting any
competitive bids, any political subdivision may, by
majority vote of all its members in a public meeting
where all the votes are recorded, elect not to exclude
from the bid the amount of business and occupation
taxes as provided in this subsection.

(d) If any of the requirements or provisions set forth
in this section jeopardize the receipt of federal funds,
then the requirement or provisions are 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, the invalidity shall not affect other
provisions or applications of this section which can be
given effect without the invalid provision or applica-
tion, and to this end the provisions of this section are
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

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 23rd day of April, 1993.

Governor