

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

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 568

(SENATOR ANDERSON, *original sponsor*)

[Passed April 10, 1993; in effect ninety 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.

1 (a) Other provisions of this article notwithstanding,
2 effective the first day of July, one thousand nine
3 hundred ninety, through the thirtieth day of June, one
4 thousand nine hundred ninety-four, in any instance
5 involving the purchase of construction services for the
6 construction, repair or improvement of any buildings
7 or portions thereof, where the total aggregate cost
8 thereof, whether one or a series of contracts are
9 awarded in completing the project, is estimated by the
10 director to exceed the sum of fifty thousand dollars
11 and where the director or any state department is
12 required under the provisions of this article to make
13 the purchase, construction, repair or improvement
14 upon competitive bids, the successful bid shall be
15 determined as provided in this section. Effective
16 beginning the first day of July, one thousand nine
17 hundred ninety-two, in any instance that a purchase
18 of commodities or printing by the director or by a
19 state department is required under the provisions of
20 this article to be made upon competitive bids, the
21 successful bid shall be determined as provided in this
22 section. The secretary of the department of tax and
23 revenue shall promulgate any rules and regulations
24 necessary to: (i) Determine that vendors have met the
25 residence requirements described in this section; (ii)
26 establish the procedure for vendors to certify the
27 residency requirements at the time of submitting their
28 bids; (iii) establish a procedure to audit bids which
29 make a claim for preference permitted by this section

30 and to reject noncomplying bids; and (iv) otherwise
31 accomplish the objectives of this section. In prescrib-
32 ing the rules and regulations, the secretary shall use a
33 strict construction of the residence requirements set
34 forth in this section. For purposes of this section, a
35 successful bid shall be determined and accepted as
36 follows:

37 (1) From an individual resident vendor who has
38 resided in West Virginia continuously for the four
39 years immediately preceding the date on which the
40 bid is submitted or from a partnership, association,
41 corporation resident vendor, or from a corporation
42 nonresident vendor which has an affiliate or subsi-
43 diary which employs a minimum of one hundred state
44 residents and which has maintained its headquarters
45 or principal place of business within West Virginia
46 continuously for four years immediately preceding the
47 date on which the bid is submitted, if the vendor's bid
48 does not exceed the lowest qualified bid from a
49 nonresident vendor by more than two and one-half
50 percent of the latter bid, and if the vendor has made
51 written claim for the preference at the time the bid
52 was submitted: *Provided*, That for purposes of this
53 subdivision, any partnership, association or corpora-
54 tion resident vendor of this state, which does not meet
55 the requirements of this subdivision solely because of
56 the continuous four-year residence requirement, shall
57 be considered to meet the requirement if at least
58 eighty percent of the ownership interest of the resi-
59 dent vendor is held by another individual, partnership,
60 association or corporation resident vendor who other-
61 wise meets the requirements of this subdivision,
62 including the continuous four-year residency require-
63 ment: *Provided, however*, That the secretary of the
64 department of tax and revenue shall promulgate rules
65 and regulations relating to attribution of ownership
66 among several resident vendors for purposes of deter-
67 mining the eighty percent ownership requirement; or

68 (2) From a resident vendor, if, for purposes of
69 producing or distributing the commodities or complet-
70 ing the project which is the subject of the vendor's bid

71 and continuously over the entire term of the project,
72 on average at least seventy-five percent of the
73 vendor's employees are residents of West Virginia who
74 have resided in the state continuously for the two
75 immediately preceding years and the vendor's bid
76 does not exceed the lowest qualified bid from a
77 nonresident vendor by more than two and one-half
78 percent of the latter bid, and if the vendor has
79 certified the residency requirements of this subdivi-
80 sion and made written claim for the preference, at the
81 time the bid was submitted; or

82 (3) From a nonresident vendor, which employs a
83 minimum of one hundred state residents or a nonres-
84 ident vendor which has an affiliate or subsidiary
85 which maintains its headquarters or principle place of
86 business within West Virginia and which employs a
87 minimum of one hundred state residents, if, for
88 purposes of producing or distributing the commodities
89 or completing the project which is the subject of the
90 vendor's bid and continuously over the entire term of
91 the project, on average at least seventy-five percent of
92 the vendor's employees or the vendor's affiliate's or
93 subsidiary's employees are residents of West Virginia
94 who have resided in the state continuously for the two
95 immediately preceding years and the vendor's bid
96 does not exceed the lowest qualified bid from a
97 nonresident vendor by more than two and one-half
98 percent of the latter bid, and if the vendor has
99 certified the residency requirements of this subdivi-
100 sion and made written claim for the preference, at the
101 time the bid was submitted; or

102 (4) From a vendor who meets either the require-
103 ments of both subdivisions (1) and (2) of this subsec-
104 tion or subdivisions (1) and (3) of this subsection, if the
105 bid does not exceed the lowest qualified bid from a
106 nonresident vendor by more than five percent of the
107 latter bid, and if the vendor has certified the residency
108 requirements above and made written claim for the
109 preference at the time the bid was submitted.

110 (b) If the secretary of the department of tax and
111 revenue determines under any audit procedure that a

112 vendor who received a preference under this section
113 fails to continue to meet the requirements for the
114 preference at any time during the term of the project
115 for which the preference was received the secretary
116 may: (1) Reject the vendor's bid; or (2) assess a penalty
117 against the vendor of not more than five percent of
118 the vendor's bid on the project.

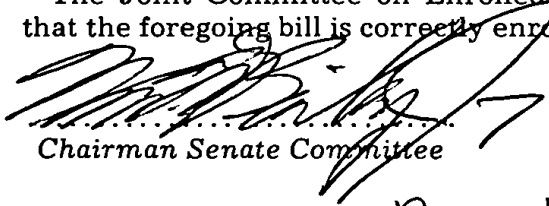
119 (c) Political subdivisions of the state including
120 county boards of education may grant the same
121 preferences to any vendor of this state who has made
122 a written claim for the preference at the time a bid is
123 submitted, but for the purposes of this subsection, in
124 determining the lowest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

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

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

150 (f) This section may be cited as the "Jobs for West
151 Virginians Act of 1990".

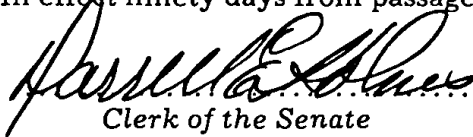
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

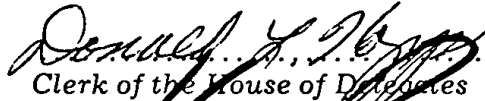

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Chairman Senate Committee

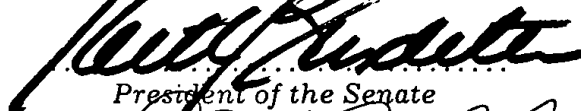

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Chairman House Committee

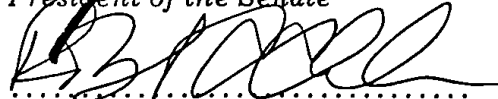
Originated in the Senate.

In effect ninety days from passage.

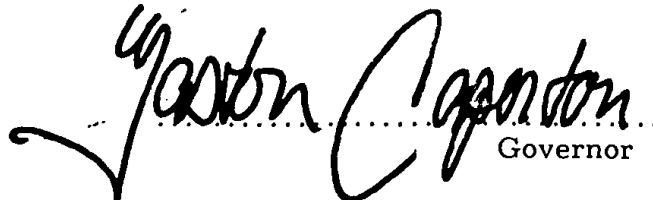

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

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


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/19/93

Time 9:56 am