

1 **Senate Bill No. 16**

2 (By Senator Foster)

3 _____
4 [Introduced January 12, 2011; referred to the Committee on
5 Government Organization; and then to the Committee on Finance.]
6 _____

7 **FISCAL**
8 **NOTE**

9
10 A BILL to amend and reenact §5A-3-37 of the Code of West Virginia,
11 1931, as amended, relating to requiring political subdivisions
12 of the state and county boards of education to give preference
13 to resident vendors and vendors employing state residents; and
14 reducing certain time requirements to meet residence
15 qualifications.

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

17 That §5A-3-37 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 3. PURCHASING DIVISION.**

20 **§5A-3-37. Preference for resident vendors; preference for vendors**
21 **employing state residents; preference for veteran**
22 **residents; exceptions.**

23 (a) ~~Effective beginning July 1, 1992, in~~ In any instance that

1 a purchase of commodities or printing by the director or by a state
2 department is required under the provisions of this article to be
3 made upon competitive bids, the successful bid shall be determined
4 as provided in this section. The Secretary of the Department of
5 Revenue shall ~~promulgate~~ propose, subject to legislative approval,
6 any rules necessary to: ~~(i)~~ (1) Determine that vendors have met the
7 residence requirements described in this section; ~~(ii)~~ (2)
8 establish the procedure for vendors to certify the residency
9 requirements at the time of submitting their bids; ~~(iii)~~ (3)
10 establish a procedure to audit bids which make a claim for
11 preference permitted by this section and to reject noncomplying
12 bids; and ~~(iv)~~ (4) otherwise accomplish the objectives of this
13 section. In prescribing the rules, the secretary shall use a
14 strict construction of the residence requirements set forth in this
15 section.

16 (b) For purposes of this section, a successful bid shall be
17 determined and accepted as follows:

18 (1) From an individual resident vendor who has resided in West
19 Virginia continuously for the four years immediately preceding the
20 date on which the bid is submitted or from a partnership,
21 association, corporation resident vendor, or from a corporation
22 nonresident vendor which has an affiliate or subsidiary which
23 employs a minimum of one hundred state residents and which has

1 maintained its headquarters or principal place of business within
2 West Virginia continuously for ~~four years~~ one year immediately
3 preceding the date on which the bid is submitted, if the vendor's
4 bid does not exceed the lowest qualified bid from a nonresident
5 vendor by more than two and one-half percent of the latter bid,
6 and if the vendor has made written claim for the preference at the
7 time the bid was submitted. ~~Provided, That~~ However, for purposes
8 of this subdivision, any partnership, association or corporation
9 resident vendor of this state, which does not meet the requirements
10 of this subdivision solely because of the continuous four-year
11 residence requirement, shall be considered to meet the requirement
12 if at least eighty percent of the ownership interest of the
13 resident vendor is held by another individual, partnership,
14 association or corporation resident vendor who otherwise meets the
15 requirements of this subdivision, including the continuous ~~four~~
16 ~~year~~ one year residency requirement. ~~Provided, however, That~~
17 However, the Secretary of the Department of Revenue shall
18 promulgate rules relating to attribution of ownership among several
19 resident vendors for purposes of determining the eighty percent
20 ownership requirement; or

21 (2) From a resident vendor, if, for purposes of producing or
22 distributing the commodities or completing the project which is the
23 subject of the vendor's bid and continuously over the entire term

1 of the project, on average at least seventy-five percent of the
2 vendor's employees are residents of West Virginia ~~who have resided~~
3 ~~in the state continuously for the two immediately preceding years,~~
4 and the vendor's bid does not exceed the lowest qualified bid from
5 a nonresident vendor by more than two and one-half percent of the
6 latter bid, and if the vendor has certified the residency
7 requirements of this subdivision and made written claim for the
8 preference, at the time the bid was submitted; or

9 (3) From a nonresident vendor, which employs a minimum of one
10 hundred state residents or a nonresident vendor which has an
11 affiliate or subsidiary which maintains its headquarters or
12 principal place of business within West Virginia and which employs
13 a minimum of one hundred state residents, if, for purposes of
14 producing or distributing the commodities or completing the project
15 which is the subject of the vendor's bid and continuously over the
16 entire term of the project, on average at least seventy-five
17 percent of the vendor's employees or the vendor's affiliate's or
18 subsidiary's employees are residents of West Virginia ~~who have~~
19 ~~resided in the state continuously for the two immediately preceding~~
20 ~~years~~ and the vendor's bid does not exceed the lowest qualified bid
21 from a nonresident vendor by more than two and one-half percent of
22 the latter bid, and if the vendor has certified the residency
23 requirements of this subdivision and made written claim for the

1 preference, at the time the bid was submitted; or

2 (4) From a vendor who meets either the requirements of both
3 subdivisions (1) and (2) of this subsection or subdivisions (1) and
4 (3) of this subsection, if the bid does not exceed the lowest
5 qualified bid from a nonresident vendor by more than five percent
6 of the latter bid, and if the vendor has certified the residency
7 requirements above and made written claim for the preference at the
8 time the bid was submitted; or

9 (5) From an individual resident vendor who is a veteran of the
10 United States Armed Forces, the Reserves or the National Guard and
11 has resided in West Virginia continuously for the ~~four years~~ one
12 year immediately preceding the date on which the bid is submitted,
13 if the vendor's bid does not exceed the lowest qualified bid from
14 a nonresident vendor by more than three and one-half percent of the
15 latter bid, and if the vendor has made written claim for the
16 preference at the time the bid was submitted; or

17 (6) From a resident vendor who is a veteran of the United
18 States Armed Forces, the Reserves or the National Guard, if, for
19 purposes of producing or distributing the commodities or completing
20 the project which is the subject of the vendor's bid and
21 continuously over the entire term of the project, on average at
22 least seventy-five percent of the vendor's employees are residents
23 of West Virginia who have resided in the state ~~continuously for the~~

1 ~~two immediately preceding years~~ and the vendor's bid does not
2 exceed the lowest qualified bid from a nonresident vendor by more
3 than three and one-half percent of the latter bid, and if the
4 vendor has certified the residency requirements of this subdivision
5 and made written claim for the preference, at the time the bid was
6 submitted; or

7 (7) Notwithstanding any provisions of subdivisions (1), (2),
8 (3), (4), (5) or (6) of this subsection to the contrary, if any
9 nonresident vendor that is bidding on the purchase of commodities
10 or printing by the director or by a state department is also
11 certified as a small, women or minority-owned business pursuant to
12 section fifty-nine of this article, the nonresident vendor shall be
13 provided the same preference made available to any resident vendor
14 under the provisions of this subsection.

15 ~~(b)~~ (c) If the Secretary of the Department of Revenue
16 determines under any audit procedure that a vendor who received a
17 preference under this section fails to continue to meet the
18 requirements for the preference at any time during the term of the
19 project for which the preference was received the secretary may:
20 (1) Reject the vendor's bid; or (2) assess a penalty against the
21 vendor of not more than five percent of the vendor's bid on the
22 project.

23 ~~(c)~~ (d) Political subdivisions of the state including county

1 boards of education ~~may~~ shall grant the same preferences to any
2 vendor of this state who has made a written claim for the
3 preference at the time a bid is submitted, but for the purposes of
4 this subsection, in determining the lowest bid, any political
5 subdivision shall exclude from the bid the amount of business
6 occupation taxes which must be paid by a resident vendor to any
7 municipality within the county comprising or located within the
8 political subdivision as a result of being awarded the contract
9 which is the object of the bid; in the case of a bid received by a
10 municipality, the municipality shall exclude only the business and
11 occupation taxes as will be paid to the municipality. ~~Provided,~~
12 ~~That~~ However, prior to soliciting any competitive bids, any
13 political subdivision may, by majority vote of all its members in
14 a public meeting where all the votes are recorded, elect not to
15 exclude from the bid the amount of business and occupation taxes as
16 provided in this subsection.

17 ~~(d)~~ (e) If any of the requirements or provisions set forth in
18 this section jeopardize the receipt of federal funds, then the
19 requirement or provisions are void and of no force and effect for
20 that specific project.

21 ~~(e)~~ (f) If any provision or clause of this section or
22 application ~~thereof~~ of this section to any person or circumstance
23 is held invalid, the invalidity shall not affect other provisions

1 or applications of this section which can be given effect without
2 the invalid provision or application, and to this end the
3 provisions of this section are severable.

4 ~~(f)~~ (g) This section may be cited as the "Jobs for West
Virginians Act of 1990."

NOTE: The purpose of this bill is to require political subdivisions of the state and county boards of education to give preference to resident vendors and vendors employing state residents. The bill also lowers certain four-year requirements to one year and eliminates certain two year requirements.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.