

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 35

BY SENATOR SNYDER

[Introduced January 13, 2016;

Referred to the Committee on Military; and then to the

Committee on Government Organization.]

1 A BILL to amend and reenact §5A-3-37 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §6-13-1 of said code, all relating to disabled veteran's preference
 3 eligibility in hiring for state civil service jobs; resident vendor bidding on state contracts;
 4 and redefining "disabled veteran" to meet federal definition.

Be it enacted by the Legislature of West Virginia:

1 That §5A-3-37 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §6-13-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

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

1 (a) ~~Effective beginning July 1, 1992,~~ In any instance that a purchase of commodities or
 2 printing by the director or by a state department is required under the provisions of this article to
 3 be made upon competitive bids, the successful bid shall be determined as provided in this section.

4 (b) The Secretary of the Department of Revenue Administration shall ~~promulgate any~~
 5 propose rules for legislative approval pursuant to the provisions of article three, chapter twenty-
 6 nine-a of this code necessary to:

7 (i) (1) Determine that vendors have met the ~~residence~~ residency requirements described
 8 in this section;

9 (ii) (2) Establish the procedure for vendors to certify the residency requirements at the time
 10 of submitting their bids;

11 (iii) (3) Establish a procedure to audit bids which make a claim for preference permitted
 12 by this section and to reject noncomplying bids; and

13 (iv) ~~otherwise~~ (4) Accomplish the objectives of this section.

14 (c) In prescribing the rules, the secretary shall use a strict construction of the ~~residence~~
15 residency requirements set forth in this section.

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

18 (1) From an individual resident vendor who has resided in West Virginia continuously for
19 the four years immediately preceding the date on which the bid is submitted or from a partnership,
20 association, corporation resident vendor, or from a corporation nonresident vendor which has an
21 affiliate or subsidiary which employs a minimum of one hundred state residents and which has
22 maintained its headquarters or principal place of business within West Virginia continuously for
23 four years immediately preceding the date on which the bid is submitted, if the vendor's bid does
24 not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half
25 percent of the latter bid, and if the vendor has made written claim for the preference at the time
26 the bid was submitted: *Provided*, That for purposes of this subdivision, any partnership,
27 association or corporation resident vendor of this state which does not meet the requirements of
28 this subdivision solely because of the continuous four-year ~~residence~~ residency requirement shall
29 be considered to meet the requirement if at least eighty percent of the ownership interest of the
30 resident vendor is held by another individual, partnership, association or corporation resident
31 vendor who otherwise meets the requirements of this subdivision, including the continuous four-
32 year residency requirement: *Provided, however*, That the Secretary of the Department of
33 ~~Revenue~~ Administration shall promulgate rules relating to attribution of ownership among several
34 resident vendors for purposes of determining the eighty percent ownership requirement; or

35 (2) From a resident vendor if, for purposes of producing or distributing the commodities or
36 completing the project which is the subject of the vendor's bid and continuously over the entire
37 term of the project, on average at least seventy-five percent of the vendor's employees are
38 residents of West Virginia who have resided in the state continuously for the two immediately
39 preceding years, and the vendor's bid does not exceed the lowest qualified bid from a nonresident

40 vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the
41 residency requirements of this subdivision and made written claim for the preference, at the time
42 the bid was submitted; or

43 (3) From a nonresident vendor which employs a minimum of one hundred state residents
44 or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or
45 principal place of business within West Virginia and which employs a minimum of one hundred
46 state residents if, for purposes of producing or distributing the commodities or completing the
47 project which is the subject of the vendor's bid and continuously over the entire term of the project,
48 on average at least seventy-five percent of the vendor's employees or the vendor's affiliate's or
49 subsidiary's employees are residents of West Virginia who have resided in the state continuously
50 for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified
51 bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the
52 vendor has certified the residency requirements of this subdivision and made written claim for the
53 preference at the time the bid was submitted; or

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

59 (5) From an individual resident vendor who is a veteran of the United States armed forces,
60 the reserve or the National Guard and has resided in West Virginia continuously for the four years
61 immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed
62 the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the
63 latter bid, and if the vendor has made written claim for the preference at the time the bid was
64 submitted; or

65 (6) From an individual resident vendor who is a disabled veteran, as defined in

66 subsection (e) of this section, and has resided in West Virginia continuously for the four years
67 immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed
68 the lowest qualified bid from a nonresident vendor by more than four and one-half percent of the
69 latter bid, and if the vendor has made written claim for the preference at the time the bid was
70 submitted; or

71 ~~(6)~~ (7) From a resident vendor who is a veteran of the United States armed forces, the
72 reserve or the National Guard if, for purposes of producing or distributing the commodities or
73 completing the project which is the subject of the vendor's bid and continuously over the entire
74 term of the project, on average at least seventy-five percent of the vendor's employees are
75 residents of West Virginia who have resided in the state continuously for the two immediately
76 preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident
77 vendor by more than three and one-half percent of the latter bid, and if the vendor has certified
78 the residency requirements of this subdivision and made written claim for the preference, at the
79 time the bid was submitted; or

80 (8) From a resident vendor who is a disabled veteran, as defined in subsection (e) of this
81 section, if, for purposes of producing or distributing the commodities or completing the project
82 which is the subject of the vendor's bid and continuously over the entire term of the project, on
83 average at least seventy-five percent of the vendor's employees are residents of West Virginia
84 who have resided in the state continuously for the two immediately preceding years and the
85 vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than
86 four and one-half percent of the latter bid, and if the vendor has certified the residency
87 requirements of this subdivision and made written claim for the preference, at the time the bid
88 was submitted; or

89 ~~(7)~~ (9) Notwithstanding any provisions of subdivision (1), (2), (3), (4), (5), ~~or (6)~~, (7) or (8)
90 of this subsection to the contrary, if any nonresident vendor that is bidding on the purchase of
91 commodities or printing by the director or by a state department is also certified as a small, women

92 or minority-owned business pursuant to section fifty-nine of this article, the nonresident vendor
93 shall be provided the same preference made available to any resident vendor under the provisions
94 of this subsection.

95 (e) For purposes of this section, "disabled veteran" means an individual who has served
96 on active duty in the armed forces, has been separated therefrom under honorable conditions,
97 and has established the present existence of a service-connected disability or is receiving
98 compensation, disability retirement benefits, or pension because of a public statute administered
99 by the Department of Veterans Affairs or a military department.

100 ~~(b)~~ (f) If the Secretary of the Department of ~~Revenue~~ Administration determines under any
101 audit procedure that a vendor who received a preference under this section fails to continue to
102 meet the requirements for the preference at any time during the term of the project for which the
103 preference was received, the secretary may:

104 (1) Reject the vendor's bid; or

105 (2) Assess a penalty against the vendor of not more than five percent of the vendor's bid
106 on the project.

107 ~~(e)~~ (g) Political subdivisions of the state including county boards of education may grant
108 the same preferences to any vendor of this state who has made a written claim for the preference
109 at the time a bid is submitted, but for the purposes of this subsection, in determining the lowest
110 bid, any political subdivision shall exclude from the bid the amount of business occupation taxes
111 which must be paid by a resident vendor to any municipality within the county comprising or
112 located within the political subdivision as a result of being awarded the contract which is the object
113 of the bid; in the case of a bid received by a municipality, the municipality shall exclude only the
114 business and occupation taxes as will be paid to the municipality: *Provided*, That prior to soliciting
115 any competitive bids, any political subdivision may, by majority vote of all its members in a public
116 meeting where all the votes are recorded, elect not to exclude from the bid the amount of business
117 and occupation taxes as provided in this subsection.

118 ~~(d)~~ (h) If any of the requirements or provisions set forth in this section jeopardize the receipt
119 of federal funds, then the requirement or provisions are void and of no force and effect for that
120 specific project.

121 ~~(e)~~ (i) If any provision or clause of this section or application thereof to any person or
122 circumstance is held invalid, the invalidity shall not affect other provisions or applications of this
123 section which can be given effect without the invalid provision or application, and to this end the
124 provisions of this section are severable.

125 ~~(f)~~ (j) This section may be cited as the Jobs for West Virginians Act of 1990.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 13. PREFERENCE RATING OF VETERANS ON WRITTEN EXAMINATION ON NONPARTISAN MERIT BASIS.

§6-13-1. Preference rating of veterans on written examinations for positions in state departments filled under nonpartisan merit system.

1 (a) For positions in any agency, as defined in section four, article one, chapter five-f of this
2 code, or any other political subdivision of this state in which positions are filled under civil service
3 or any job classification system, a preference of five points in addition to the regular numerical
4 score received on examination shall be awarded to all veterans and disabled veterans having
5 qualified for appointment by making a minimum passing grade; and to all veterans awarded the
6 Purple Heart, or ~~having a compensable service-connected disability, as established by any proper~~
7 ~~veterans' bureau or department of the federal government~~ disabled veterans, an additional five
8 points shall be allowed.

9 (b) For purposes of this article, a person shall receive "disabled veteran" preference if he
10 or she has served on active duty in the armed forces, has been separated therefrom under
11 honorable conditions, and has established the present existence of a service-connected disability
12 or is receiving compensation, disability retirement benefits, or pension because of a public statute

13 administered by the Department of Veterans Affairs or a military department;

14 (c) For the ~~purpose~~ purposes of this article, a person is defined as a "veteran" if he or she
15 fulfills the requirements of one of the following ~~subsections~~ subdivisions:

16 ~~(a)~~ (1) Served on active duty anytime between December 7, 1941, and July 1, 1955.
17 However, any person who was a reservist called to active duty between February 1, 1955, and
18 October 14, 1976, must meet ~~condition (b) stated below~~ subdivision (2) of this subsection;

19 ~~(b)~~ (2) Served on active duty anytime between July 2, 1955, and October 14, 1976, or a
20 reservist called to active duty between February 1, 1955, and October 14, 1976, and who served
21 for more than one hundred eighty days;

22 ~~(c)~~ (3) Entered on active duty between October 15, 1976, and September 7, 1980, or a
23 reservist who entered on active duty between October 15, 1976, and October 13, 1982, and
24 received a campaign badge or expeditionary medal; ~~or is a disabled veteran~~; or

25 ~~(d)~~ (4) Enlisted in the armed forces after September 7, 1980, or entered active duty other
26 than by enlistment on or after October 14, 1982, and ~~(4)~~ completed twenty-four months of
27 continuous active duty or the full period called or ordered to active duty, or was discharged under
28 10 U. S. C. §1171, or for hardship under 10 U. S. C. §1173, and received or was entitled to receive
29 a campaign badge or expeditionary medal. ~~or (2) is a disabled veteran.~~

30 (d) To receive veteran preference, separation from active duty must have been under
31 honorable conditions. This includes honorable and general discharges. A clemency discharge
32 does not meet the requirements of the Veteran Preference Act. Active duty for training in the
33 military reserve and National Guard programs is not considered active duty for purposes of
34 veteran preference.

35 (e) These awards shall be made for the benefit and preference in appointment of all
36 veterans who have heretofore or who shall hereafter take examinations, but shall not operate to
37 the detriment of any person heretofore appointed to a position in a department or agency.

NOTE: The purpose of this bill is to adopt the federal definition for disabled veterans' preference eligibility in hiring for state civil service jobs and resident vendor bidding on state contracts.

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