

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 390**

BY SENATORS KARNES AND MILLER

[Introduced January 26, 2016;

Referred 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, relating  
2 to providing for resident farm vendor's bidding preference.

*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 to read as follows:

### **ARTICLE 3. PURCHASING DIVISION.**

#### **§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; preference for 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 The Secretary of the Department of Revenue shall promulgate any rules necessary to: (i)  
5 Determine that vendors have met the residence requirements described in this section; (ii)  
6 establish the procedure for vendors to certify the residency requirements at the time of submitting  
7 their bids; (iii) establish a procedure to audit bids which make a claim for preference permitted by  
8 this section and to reject noncomplying bids; and (iv) otherwise accomplish the objectives of this  
9 section. In prescribing the rules, the secretary shall use a strict construction of the residence  
10 requirements set forth in this section. For purposes of this section, a successful bid shall be  
11 determined and accepted as follows:

12 (1) From an individual resident vendor who has resided in West Virginia continuously for  
13 the four years immediately preceding the date on which the bid is submitted or from a partnership,  
14 association, corporation resident vendor, or from a corporation nonresident vendor which has an  
15 affiliate or subsidiary which employs a minimum of one hundred state residents and which has  
16 maintained its headquarters or principal place of business within West Virginia continuously for  
17 four years immediately preceding the date on which the bid is submitted, if the vendor's bid does  
18 not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half

19 percent of the latter bid, and if the vendor has made written claim for the preference at the time  
20 the bid was submitted: *Provided*, That for purposes of this subdivision, any partnership,  
21 association or corporation resident vendor of this state, which does not meet the requirements of  
22 this subdivision solely because of the continuous four-year residence requirement, shall be  
23 considered to meet the requirement if at least eighty percent of the ownership interest of the  
24 resident vendor is held by another individual, partnership, association or corporation resident  
25 vendor who otherwise meets the requirements of this subdivision, including the continuous four-  
26 year residency requirement: *Provided, however*, That the Secretary of the Department of  
27 Revenue shall promulgate rules relating to attribution of ownership among several resident  
28 vendors for purposes of determining the eighty percent ownership requirement; or

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

37 (3) From a nonresident vendor, which employs a minimum of one hundred state residents  
38 or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or  
39 principal place of business within West Virginia and which employs a minimum of one hundred  
40 state residents, if, for purposes of producing or distributing the commodities or completing the  
41 project which is the subject of the vendor's bid and continuously over the entire term of the project,  
42 on average at least seventy-five percent of the vendor's employees or the vendor's affiliate's or  
43 subsidiary's employees are residents of West Virginia who have resided in the state continuously  
44 for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified

45 bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the  
46 vendor has certified the residency requirements of this subdivision and made written claim for the  
47 preference, at the time the bid was submitted; or

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

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

59 (6) From a resident vendor who is a veteran of the United States Armed Forces, the  
60 Reserves or the National Guard, if, for purposes of producing or distributing the commodities or  
61 completing the project which is the subject of the vendor's bid and continuously over the entire  
62 term of the project, on average at least seventy-five percent of the vendor's employees are  
63 residents of West Virginia who have resided in the state continuously for the two immediately  
64 preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident  
65 vendor by more than three and one-half percent of the latter bid, and if the vendor has certified  
66 the residency requirements of this subdivision and made written claim for the preference, at the  
67 time the bid was submitted; or

68 (7) From a resident farm vendor who operates a farm business incorporated and located  
69 in West Virginia as defined by section three, article twenty-three, chapter eleven of this code if  
70 the farm vendor's bid does not exceed the lowest qualified bid from a nonresident farm vendor by

71 more than eight percent of the latter bid, and if the vendor has made written claim for the  
72 preference at the time the bid was submitted, with the goal that at least fifteen percent of the  
73 products being procured be grown by a West Virginia farm vendor by 2025; or

74 ~~(7)~~ (8) Notwithstanding any provisions of subdivisions (1), (2), (3), (4), (5) or (6) of this  
75 subsection to the contrary, if any nonresident vendor that is bidding on the purchase of  
76 commodities or printing by the director or by a state department is also certified as a small, women  
77 or minority-owned business pursuant to section fifty-nine of this article, the nonresident vendor  
78 shall be provided the same preference made available to any resident vendor under the provisions  
79 of this subsection.

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

85 (c) Political subdivisions of the state including county boards of education may grant the  
86 same preferences to any vendor of this state who has made a written claim for the preference at  
87 the time a bid is submitted, but for the purposes of this subsection, in determining the lowest bid,  
88 any political subdivision shall exclude from the bid the amount of business occupation taxes which  
89 must be paid by a resident vendor to any municipality within the county comprising or located  
90 within the political subdivision as a result of being awarded the contract which is the object of the  
91 bid; in the case of a bid received by a municipality, the municipality shall exclude only the business  
92 and occupation taxes as will be paid to the municipality: *Provided*, That prior to soliciting any  
93 competitive bids, any political subdivision may, by majority vote of all its members in a public  
94 meeting where all the votes are recorded, elect not to exclude from the bid the amount of business  
95 and occupation taxes as provided in this subsection.

96 (d) If any of the requirements or provisions set forth in this section jeopardize the receipt

97 of federal funds, then the requirement or provisions are void and of no force and effect for that  
98 specific project.

99 (e) If any provision or clause of this section or application thereof to any person or  
100 circumstance is held invalid, the invalidity shall not affect other provisions or applications of this  
101 section which can be given effect without the invalid provision or application, and to this end the  
102 provisions of this section are severable.

103 (f) This section may be cited as the “Jobs for West Virginians Act of 1990.”

NOTE: The purpose of this bill is to provide for a resident farm vendor’s bidding preference.

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