

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 88

BY SENATOR KARNES

[Introduced January 10, 2018; Referred
to the Committee on Agriculture and Rural Development;
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, relating
2 to providing a resident farm vendor's bidding preference.

Be it enacted by the Legislature of West Virginia:

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 §11-23-3 of this code if the farm vendor's bid does not exceed the
70 lowest qualified bid from a nonresident farm vendor by more than eight percent of the latter bid,
71 and if the vendor has made written claim for the preference at the time the bid was submitted,

72 with the goal that at least fifteen percent of the products being procured be grown by a West
73 Virginia farm vendor by 2026; 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 §5A-3-59 of this code, the nonresident vendor shall be
78 provided the same preference made available to any resident vendor under the provisions of this
79 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 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.