



*Jim Justice*  
*Governor of West Virginia*

March 27, 2019

**VIA HAND DELIVERY**

The Honorable Mac Warner  
Secretary of State  
Building 1, Suite 157-K  
State Capitol  
Charleston, WV 25305

Re: Enrolled Senate Bill 190

Dear Secretary Warner:

Pursuant to the provisions of Section fifty-one, Article VI of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill 190. The rule at issue in the bill makes only one substantive change, which is to allow both salaried and hourly classified services employees to be paid overtime when they have taken leave earlier in the work week.

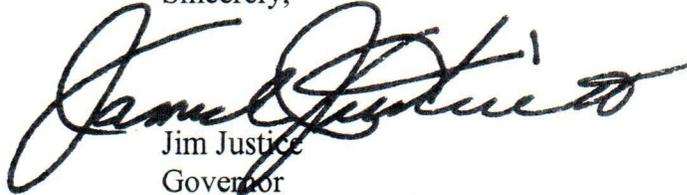
The intent of the rule appears to be to avoid having employees lose annual leave that cannot be carried forward into the next calendar year. This issue is not unique to Division of Highways employees and has been addressed by this administration through an executive order that allowed Division of Corrections employees, many of whom worked mandatory overtime due to staffing shortages, to carry forward more than the limit of annual leave hours. If the inability of employees to use annual leave by the end of the calendar year is a systemic problem due to snow removal duties, a similar executive order could address the issue on a year-to-year basis.

The other problem with the rule is that it fails to recognize the difference between employees entitled to overtime under the federal Fair Labor Standards Act (FLSA), and those employees that are exempt from the overtime requirements of the act. Employees that are exempt from FLSA are not entitled to earn overtime, although an employer can elect to pay those employees overtime. Employees who are exempt from FLSA are those who are employed in a "bona fide executive, administrative or professional capacity." 29 CFR 541.0(a). These types of positions are not typically involved with emergency response or public safety functions, therefore overtime for these employees would generally be unnecessary. By excluding these FLSA-exempt employees from eligibility to receive overtime, unnecessary costs to the State Road Fund are saved, allowing for those funds to instead be available for more roads projects.

OFFICE OF THE GOVERNOR

For these reasons, I disapprove and return Enrolled Senate Bill 190.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice". The signature is fluid and cursive, with a large initial "J".

Jim Justice  
Governor

cc: The Honorable Mitch Carmichael  
President of the Senate

The Honorable Roger Hanshaw  
Speaker of the House of Delegates