

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
Charleston, WV 25305

April 2, 2010

VETO MESSAGE

The Honorable Natalie E. Tennant
Secretary of State
State Capitol
Charleston, WV 25305

Dear Secretary of State Tennant:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove Enrolled House Bill No. 3110.

Enrolled House Bill No. 3110 renames conservation officers as “natural resource police officers”. The Bill also renames the chief conservation officer the “chief natural resources police officer”. I strongly support the intent of this Bill as a matter of safety and respect for our state conservation officers. However, I must regretfully veto the Bill because of increased liabilities and litigation that may result over whether the officers are eligible to receive certain tax benefits.

The tax benefit at issue is a decreasing personal income tax modification applicable to all retirement income that is available to retirees under a “West Virginia police” retirement plan. *See* W. Va. Code § 11-21-12(c)(6). Retired conservation officers are currently entitled to a \$2,000 decreasing personal income tax modification for income received from the Public Employees Retirement System. *See* W. Va. Code 11-21-12(c)(5). It is unclear from the Bill whether the name change would entitle “natural resource police officers” to the more lucrative decreasing personal income tax modification that is available to police. In the absence of specific language addressing the issue, litigation would surely result.

Moreover, if a court would determine that natural resource police officers are entitled to a decreasing modification on all of their retirement income, similarly situated federal retirees could claim that the state tax scheme is required to treat them the same. *See Brown v. Mierke*, 443 S. E. 2d 462 (W. Va. 1994) (upholding state tax scheme that prohibited federal military retirees from receiving certain tax and retirement benefits, in part, because the retirees’ job descriptions did not correspond in any meaningful way with the job descriptions of retired state municipal firefighters and police officers); *see also Dodson v. Palmer*, Civil Action No. 00-C-AP-10, Circuit Court of Monongalia County (2000) (holding that a retired federal corrections officer and firefighter was entitled to the same tax benefits as retired West Virginia police officers and firefighters). Under this scenario, the State would be liable for more funds than what was estimated in the fiscal note accompanying this Bill. Therefore, the fiscal impact of this Bill is unclear and should be reevaluated.

prior to any reconsideration by the Legislature.

For these reasons, I must veto Enrolled Committee Substitute for House Bill No. 3110. However, I support the intent of this legislation and I intend to seek passage of a revised Bill that addresses the concerns outlined above.

Very truly yours,

JOE MANCHIN, III,
Governor.