



Jim Justice
Governor of West Virginia

March 28, 2018

VIA HAND DELIVERY

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

RE: Enrolled Committee Substitute for House Bill 4009

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill No. 4009.

Enrolled Committee Substitute for House Bill 4009 requires the award or recovery of funds or assets, because of lawsuit or settlement, to the state of any kind be deposited in the General Revenue Fund. Funds or assets collected would be required to be dispersed only through a legislative appropriation which would significantly delay any implementation of correcting the problem or redress of the damages awarded.

Although this bill was intended to disallow unfettered use of an officeholder's discretionary settlement funds, its application to the Executive Branch is ill conceived and does not take into consideration the practical effect on an agency when actual monetary damages are incurred because of a breach of contract. For example, if the roof on a state building is being repaired, is damaged during performance and there is a failed completion of the initial contractor's work, the state agency may have to bring an action against the contractor for the damages. In this instance, the state agency may be required to hire another contractor to repair the damages and complete the work, causing the agency to incur substantial additional damages. The agency would be required to recover by court action, then the damages received for the roof

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are then deposited to the General Fund. Under this bill, only in the event if the Legislature chose, to re-appropriate, would the agency recover for its loss.

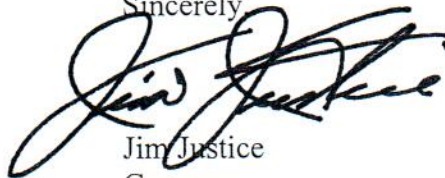
Additionally, when the recovery of settlement funds are damages because of a fraud investigation against a vendor or constituent, to reallocate the money to the General Fund impedes the purpose of the state's litigation against a fraudulent vendor and limits the agency's ability to complete the contract.

Also, the bill does not allow for the return of any administrative costs on behalf of the state agency in a damage award to the state agency involved in the litigation or prosecution of the case. However, the bill does specifically to the Attorney General to recover those costs. The lack of administrative costs contemplated in this bill could discourage state agencies from bringing lawsuits or assisting in the prosecution of cases in the future.

Finally, to require that any damages awarded to a state agency be deposited in the General Revenue Fund and then be re-appropriated through the legislative process would significantly delay the timely operation of state contracts and perhaps result in more damages, especially in instances where mitigation of damages is required.

I look forward to the opportunity to address this important issue with the WV Legislature, however, for these reasons, I must disapprove and return Enrolled Committee Substitute for House Bill No. 4009.

Sincerely,



Jim Justice
Governor

cc: The Honorable Mitch Carmichael
President of the Senate

The Honorable Tim Armstead
Speaker of the House of Delegates