



Jim Justice
Governor of West Virginia

March 25, 2020

VIA HAND DELIVERY

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

Re: Enrolled Committee Substitute for Senate Bill 163

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return the Enrolled Committee Substitute for Senate Bill 163, which is intended to facilitate the collection of hotel occupancy taxes imposed by county commissions and municipalities.

The Enrolled Committee Substitute for Senate Bill 163 contains fatal technical flaws. For example, while the bill provides for marketplace facilitators to pay collected hotel occupancy taxes over to the State Tax Division, the bill does not specify the date by which the collected taxes must be paid over to the Tax Division nor does it provide the Tax Commissioner with the necessary tools to administer, collect, and enforce the tax. Fundamentally, the bill fails to provide a means for the collected tax to be remitted to the appropriate county commission or municipality imposing the tax.

Additionally, while the bill provides for marketplace facilitators to collect hotel occupancy taxes, many marketplace facilitators are located outside West Virginia and do not have a physical presence in this State. In this regard, the bill does not address a significant constitutional issue by requiring an "economic nexus" with West Virginia, such as is found in W. Va. Code § 11-15A-6b, which was held by the United States Supreme Court to be constitutional in *South Dakota v. Wayfair, Inc.*, 585 U.S. ___, 138 S. Ct. 2080 (2018). Until this issue is addressed, it is likely that marketplace facilitators will not collect and remit hotel occupancy taxes.

For these reasons, I must disapprove and return the Enrolled Committee Substitute for Senate Bill 163.

OFFICE OF THE GOVERNOR

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice", written over the word "Sincerely,".

Jim Justice
Governor

cc: The Honorable Mitch Carmichael
President of the Senate
The Honorable Roger Hanshaw
Speaker of the House of Delegates