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SECRETARY OF STATE

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March 28, 2007

VIA HAND DELIVERY

The Honorable Betty Ireland  
Secretary of State  
State of West Virginia  
State Capitol  
Charleston, West Virginia 25305

Dear Secretary Ireland:

After **extensive consideration**, and pursuant to the provisions of Section Fourteen, Article Seven of the Constitution of W'r'est Virginia, I **hereby disapprove and return** Enrolled Committee Substitute for Senate Bill No. 738.

This Bill would require the West Virginia Parkways, Economic Development and Tourism Authority (hereinafter the "Parkways Authority" or "Authority") to report to the Joint Committee on Government and Finance prior to the adoption of a new toll or a revision to an existing toll on the West Virginia Turnpike (hereinafter "Turnpike"). Additionally, the Bill requires an affirmative vote of the Legislature prior to the implementation of a new toll or the revision of an existing toll. Although I empathize with the well-founded concerns that many of our citizens, particularly those in southern West Virginia, have raised about the operation of the Parkways Authority, I must object to this Bill.

By mandating legislative approval of any changes to tolls on the Turnpike, Enrolled Committee Substitute for Senate Bill No. 738 raises significant constitutional and financial concerns that cannot be overstated. First, adding this new requirement at this time runs afoul of the Contract Clauses of the Constitution of West Virginia and the United States Constitution, which prohibit laws that substantially impair the rights of parties to existing contracts. Currently, revenues from tolls are used and pledged to secure payment on outstanding bonds; at the time such bonds were issued, the Parkways Authority's enabling legislation granted the Authority the exclusive ability to establish tolls and provided unequivocally that this ability would not be subject to regulation by any other department or agency of state government. As a result, those bondholders that

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invested in Turnpike bonds did so under the current statutory framework, which established the reasonable expectations of the parties (especially the investors) at the time the bonds were issued. By drastically changing this framework - and altering the ground rules upon which the parties relied - Enrolled Committee Substitute for Senate Bill No. 738 exposes the Parkways Authority to potential legal action for the impairment of pre-existing contractual rights. *See US. Trust Company of Neu, York, Trustee v. New Jersey*, 431 U.S. 1 (1977) (concluding that the legislative repeal of a statutory bond security covenant for a cooperative port authority, which was "an important security provision" for purchasers of bonds issued by the authority, violated the Contracts Clause of Article I, § 10 of the United States Constitution).

Additionally, the provisions of this Bill jeopardize the Parkways Authority's - and ultimately the State's - credit rating. My administration, working closely with the Legislature, has made great strides in improving our overall credit rating by making responsible fiscal decisions and investing almost \$900 million in excess retirement system contributions over the past two years. Unfortunately, I fear that much of this work could be imperiled if Enrolled Committee Substitute for Senate Bill No. 738 were to become law. According to all three rating agencies (Standard & Poor's, Moody's Investor Services, and Fitch Ratings), the independence of the Parkways Authority and its ability to promptly revise tolls free from external interference are critical factors in determining the Authority's credit rating and could affect the corresponding trading value of Turnpike bonds. This Bill, however, would expose the Authority's management of the Turnpike to an additional layer of review (legislative approval), which could constrain the Authority's ability to promptly and effectively respond to issues as they arise, including the condition and state of repair of the Turnpike itself - all of which could be considered as credit weaknesses by Wall Street.

For these reasons, I must veto this legislation. Notwithstanding this action, I am committed to taking the steps necessary to return the focus of the Parkways Authority to its core and principal mission: the operation and maintenance of the West Virginia Turnpike. This goal cannot be accomplished overnight and will undoubtedly require legislative action. Nevertheless, my administration, working in conjunction with representatives of the Authority, intends to pursue a series of initiatives designed to make the Authority more efficient and more responsive to the needs of our citizens that frequently travel on the Turnpike.

Among the first of these initiatives will be the elimination of all economic development and tourism projects from among the Authority's activities. Although well intentioned, the expansion of the Authority's focus to include these responsibilities has diluted the Authority's effectiveness in responding to the needs of the Turnpike. By narrowing the Authority's statutory responsibilities in this manner, the Authority will be

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more focused on its core responsibilities of operating and maintaining the Turnpike. Similarly, the operation, maintenance and upkeep of numerous travel and service plazas along the Turnpike may be more aptly suited to other state agencies or the private sector.

In addition, the operation of Tamarack, a home to numerous West Virginia artisans and craftspersons, is perfectly suited to the expertise of the state Department of Commerce, which can ensure that Tamarack will continue to promote and protect our treasured Appalachian heritage. Moreover, the Department of Commerce can assist Tamarack in developing an improved business plan designed to showcase the best of our State while simultaneously enhancing the return on the State's investment in this facility.

In addition to refocusing the activities of the Authority, I propose institutionalizing the Authority's commitment to operating in a fiscally sound manner. Specifically, I intend to introduce legislation that will limit the use of Turnpike toll revenues to projects involving the maintenance, improvement, repair and upkeep of the Turnpike, including the widening of the Turnpike where necessary for safety reasons. To ensure the wisdom of these expenditures, the necessity of such projects should be jointly recommended by the Authority and the Federal Highways Administration. The use of toll revenues for any other purpose should require legislative approval. Such limitations on the use of toll fees represents the most efficient means of sustaining the Turnpike, as necessary construction will be directly linked to those that travel it even' day. Moreover, such an exercise of fiscal discipline will only further enhance the attractiveness of Turnpike bonds as an investment.

Finally, to foster the efficient flow of traffic on the Turnpike while also alleviating the costs incurred by frequent travelers of the highway, I intend to introduce legislation that will provide a state income tax deduction for taxpayers utilizing commuter passes or the *E-ZPA.SS* electronic transponders to pay tolls on the Turnpike. With adoption of such a measure, West Virginia will join several other states whose toll roads have realized increased efficiency and smoother traffic flows while rewarding their loyal and valued customers.

By undertaking the above initiatives, the Parkways Authority will be well positioned to provide a safe and effective stream of transportation over which West Virginia's citizens can navigate toward a bright future of cultural, social and economic prosperity.

With warmest regards,

A handwritten signature in dark ink, appearing to read 'J Manchin', with a stylized flourish at the end.

**Joe Manchin III**

Governor

cc: The Honorable Earl Ray Tomblin  
President, West Virginia Senate  
The Honorable Richard Thompson  
Speaker, West Virginia House of Delegates