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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2005

ENROLLED

SENATE BILL NO. 237

(By Senator McCABE, ET AL)

PASSED APRIL 9, 2005

In Effect July 1, 2005 **Passage**

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Senate Bill No. 237

(By SENATORS MCCABE, BAILEY, EDGELL,
MCKENZIE, KESSLER AND FOSTER)

[Passed April 9, 2005; to take effect July 1, 2005.]

AN ACT to amend and reenact §7-18-2, §7-18-9, and §7-18-14 of the Code of West Virginia, 1931, as amended, all relating to the hotel occupancy tax generally; allowing municipalities to increase the rate of tax imposed to six percent; exempting certain hotels from the imposition of the tax; authorizing imposition of certain tax by counties on certain hotels located in municipality; requiring public hearings on proposed increases; providing additional legislative findings as to purposes for which public financial support should be provided; and providing a misdemeanor criminal penalty for members of governing bodies who vote for or cause expenditures of tax revenues for purposes not specified in said article.

Be it enacted by the Legislature of West Virginia:

That §7-18-2, §7-18-9 and §7-18-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-2. Rate of tax.

1 The rate of tax imposed shall be three percent of the
2 consideration paid for the use or occupancy of a hotel
3 room: *Provided*, That on and after the first day of July,
4 two thousand five, a municipality may by ordinance
5 increase the rate of tax imposed in this section to not more
6 than six percent of the consideration paid for the use or
7 occupancy of a hotel room: *Provided, however*, That
8 notwithstanding any other provision of this article to the
9 contrary, a municipality may not impose any tax autho-
10 rized by this article on a hotel located within its corporate
11 limits upon which a county was imposing a tax authorized
12 by this article on or after the first day of January, two
13 thousand five, and continuously thereafter to and includ-
14 ing the effective date of annexation of the territory in
15 which the hotel is located pursuant to article six, chapter
16 eight of this code and as to that hotel, the county is
17 authorized to continue to impose and collect the tax
18 authorized by this article at the rate of three percent of the
19 consideration paid for the use or occupancy of a hotel
20 room: *Provided further*, That in the event the county
21 commission duly enters an order of record that ceases to
22 impose the tax authorized by this article on that hotel,
23 then, as to that hotel, the municipality in which the hotel
24 is located by reason of the annexation may impose the tax
25 authorized by this article. Prior to the second reading of
26 an ordinance proposed by a municipality to increase the
27 rate of tax, the municipality shall conduct a properly
28 noticed public hearing on the issue. The consideration
29 paid for the use or occupancy of a hotel room shall not
30 include the amount of tax imposed on the transaction
31 under article fifteen, chapter eleven of this code or charges
32 for meals, valet service, room service, telephone service or
33 other charges or consideration not paid for use or occu-
34 pancy of a hotel room.

§7-18-9. Total amount collected to be remitted.

1 A profit may not accrue to any person as a result of the
2 collection of the tax authorized under this article. Not-

3 withstanding that the total amount of taxes collected by a
4 hotel operator may be in excess of the amount for which a
5 consumer would be liable by the application of the levy
6 imposed under this article for the occupancy of a hotel
7 room or rooms, the total amount of all taxes collected by
8 any hotel operator shall be remitted to the taxing author-
9 ity as hereinafter provided.

§7-18-14. Proceeds of tax; application of proceeds.

1 (a) *Application of proceeds.* – The net proceeds of the tax
2 collected and remitted to the taxing authority pursuant to
3 this article shall be deposited into the general revenue
4 fund of such municipality or county commission and, after
5 appropriation thereof, shall be expended only as provided
6 in subsections (b) and (c) of this section.

7 (b) *Required expenditures.* – At least fifty percent of the
8 net revenue receivable during the fiscal year by a county
9 or a municipality pursuant to this article shall be ex-
10 pended in the following manner for the promotion of
11 conventions and tourism:

12 (1) *Municipalities.* – If a convention and visitor's bureau
13 is located within the municipality, county or region, the
14 governing body of such municipality shall appropriate the
15 percentage required by this subsection to that bureau. If
16 a convention and visitor's bureau is not located within
17 such municipality, county or region, then the percentage
18 appropriation required by this subsection shall be appro-
19 priated as follows:

20 (i) Any hotel located within such municipality, county or
21 region may apply to such municipality for an appropri-
22 ation to such hotel of a portion of the tax authorized by this
23 article and collected by such hotel and remitted to such
24 municipality, for uses directly related to the promotion of
25 tourism and travel, including advertising, salaries, travel,
26 office expenses, publications and similar expenses. The
27 portion of such tax allocable to such hotel shall not exceed
28 seventy-five percent of that portion of such tax collected

29 and remitted by such hotel which is required to be ex-
30 pended pursuant to this subsection: *Provided*, That prior
31 to appropriating any moneys to such hotel such municipal-
32 ity shall require the submission of, and give approval to, a
33 budget setting forth the proposed uses of such moneys.

34 (ii) If there is more than one convention and visitor's
35 bureau located within a municipality, county or region, the
36 city council may allocate the tax authorized by this article
37 to one or more of such bureaus in such portion as the city
38 council in its sole discretion determines.

39 (iii) The balance of net revenue required to be expended
40 by this subsection shall be appropriated to the regional
41 travel council serving the area in which the municipality
42 is located.

43 (2) *Counties.* – If a convention and visitor's bureau is
44 located within a county or region, the county commission
45 shall appropriate the percentage required by this subsec-
46 tion to that convention and visitor's bureau. If a conven-
47 tion and visitor's bureau is not located within such county
48 or region, then the percentage appropriation required by
49 this subsection shall be appropriated as follows:

50 (i) Any hotel located within such county or region may
51 apply to such county for an appropriation to such hotel of
52 a portion of the tax authorized by this article and collected
53 by such hotel and remitted to such county, for uses directly
54 related to the promotion of tourism and travel, including
55 advertising, salaries, travel, office expenses, publications
56 and similar expenses. The portion of such tax allocable to
57 such hotel shall not exceed seventy-five percent of that
58 portion of such tax collected and remitted by such hotel
59 which is required to be expended pursuant to this subsec-
60 tion: *Provided*, That prior to appropriating any moneys to
61 such hotel such county shall require the submission of, and
62 give approval to, a budget setting forth the proposed uses
63 of such moneys.

64 (ii) If there is more than one convention and visitor's
65 bureau located within a county or region, the county
66 commission may allocate the tax authorized by this article
67 to one or more of such bureaus in such portion as the
68 county commission in its sole discretion determines.

69 (iii) The balance of net revenue required to be expended
70 by this subsection shall be appropriated to the regional
71 travel council serving the area in which the county is
72 located.

73 (3) *Legislative finding.* – The Legislature hereby finds
74 and declares that in order to attract new business and
75 industry to this state and to retain existing business and
76 industry all to provide the citizens of the state with
77 economic security, and to advance the business prosperity
78 and economic welfare of this state, it is necessary to
79 enhance recreational and tourism opportunities. There-
80 fore, in order to promote recreation and tourism, the
81 Legislature finds that public financial support should be
82 provided for constructing, equipping, improving and
83 maintaining projects, agencies and facilities which pro-
84 mote recreation and tourism. The Legislature also finds
85 that the support of convention and visitor's bureaus, hotels
86 and regional travel councils is a public purpose for which
87 funds may be expended. Local convention and visitor's
88 bureaus, hotels and regional travel councils receiving
89 funds under this subsection may expend such funds for the
90 payment of administrative expenses, and for the direct or
91 indirect promotion of conventions and tourism, and for
92 any other uses and purposes authorized by subdivisions (1)
93 and (2) of this subsection.

94 (c) *Permissible expenditures.* – After making the appro-
95 priation required by subsection (b) of this section, the
96 remaining portion of the net revenues receivable during
97 the fiscal year by such county or municipality, pursuant to
98 this article, may be expended for one or more of the
99 purposes set forth in this subsection, but for no other

100 purpose. The purposes for which expenditures may be
101 made pursuant to this subsection are as follows:

102 (1) The planning, construction, reconstruction, establish-
103 ment, acquisition, improvement, renovation, extension,
104 enlargement, equipment, maintenance, repair and opera-
105 tion of publicly owned convention facilities, including, but
106 not limited to, arenas, auditoriums, civic centers and
107 convention centers;

108 (2) The payment of principal or interest or both on
109 revenue bonds issued to finance such convention facilities;

110 (3) The promotion of conventions;

111 (4) The construction, operation or maintenance of public
112 parks, tourist information centers and recreation facilities
113 (including land acquisition);

114 (5) The promotion of the arts;

115 (6) Historic sites;

116 (7) Beautification projects; or

117 (8) Medical care, in an amount not exceeding one
118 hundred thousand dollars, in any county where: (i) There
119 is an urgent necessity to preserve the delivery of acute
120 medical care services; (ii) there is an increase in need for
121 acute medical care services directly related to tourism; (iii)
122 recurrent flooding in the county significantly disrupts, on
123 a periodic basis, the delivery of acute medical care ser-
124 vices; (iv) there is an inadequate economic base within the
125 county from any source other than tourism to preserve the
126 delivery of acute medical care services; (v) there is an
127 inadequate economic base directly related to low popula-
128 tion in the county, specifically, a population of less than
129 ten thousand persons according to the census of the year
130 one thousand nine hundred ninety; and (vi) there is one
131 and only one hospital within the county; and the county
132 commission makes specific findings, by resolution, that all
133 of the foregoing conditions within the county exist.

134 (d) *Definitions.* – For purposes of this section, the
135 following terms are defined:

136 (1) *Convention and visitor’s bureau and visitor’s and*
137 *convention bureau.* – “Convention and visitor’s bureau”
138 and “visitor’s and convention bureau” are interchangeable
139 and either shall mean a nonstock, nonprofit corporation
140 with a full-time staff working exclusively to promote
141 tourism and to attract conventions, conferences and
142 visitors to the municipality, county or region in which such
143 convention and visitor’s bureau or visitor’s and convention
144 bureau is located or engaged in business within.

145 (2) *Convention center.* – “Convention center” means a
146 convention facility owned by the state, a county, a municipi-
147 pality or other public entity or instrumentality and shall
148 include all facilities, including armories, commercial,
149 office, community service and parking facilities and
150 publicly owned facilities constructed or used for the
151 accommodation and entertainment of tourists and visitors,
152 constructed in conjunction with the convention center and
153 forming reasonable appurtenances thereto.

154 (3) *Fiscal year.* – “Fiscal year” means the year beginning
155 the first day of July and ending the thirtieth day of June of
156 the next calendar year.

157 (4) *Net proceeds.* – “Net proceeds” means the gross
158 amount of tax collections less the amount of tax lawfully
159 refunded.

160 (5) *Promotion of the arts.* – “Promotion of the arts”
161 means activity to promote public appreciation and interest
162 in one or more of the arts. It includes the promotion of
163 music for all types, the dramatic arts, dancing, painting
164 and the creative arts through shows, exhibits, festivals,
165 concerts, musicals and plays.

166 (6) *Recreational facilities.* – “Recreational facilities”
167 means and includes any public park, parkway, playground,
168 public recreation center, athletic field, sports arena,

169 stadium, skating rink or arena, golf course, tennis courts
170 and other park and recreation facilities, whether of a like
171 or different nature, that are owned by a county or municipi-
172 pality.

173 (7) *Region*. – “Region” means an area consisting of one
174 or more counties that have agreed by contract to fund a
175 convention and visitor’s bureau to promote those counties.

176 (8) *Regional travel council*. – “Regional travel council”
177 means a nonstock, nonprofit corporation, with a full-time
178 staff working exclusively to promote tourism and to
179 attract conventions, conferences and visitors to the region
180 of this state served by the regional travel council.

181 (9) *Historic site*. – “Historic site” means any site listed
182 on the United States national register of historic places, or
183 listed by a local historical landmarks commission, estab-
184 lished under state law, when such sites are owned by a
185 city, a county or a nonprofit historical association and are
186 open, from time to time, to accommodate visitors.

187 (e) Any member of a governing body who willingly and
188 knowingly votes to or causes to be expended moneys
189 generated by the provisions of this section for purposes
190 other than specifically set forth in this section is guilty of
191 a misdemeanor and, upon conviction thereof, shall be fined
192 not more than one hundred dollars.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *approved* this the *28th*
Day of *April*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 27 2005

Time 2:00 pm 