

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Engrossed

Senate Bill 488

BY SENATORS MAYNARD AND WOODRUM

[Introduced March 1, 2021; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §7-18-13a and §7-18-14 of the Code of West Virginia, 1931, as
2 amended, all relating to the distribution of hotel occupancy tax proceeds to convention
3 and visitor's bureaus; providing that a convention and visitor's bureau shall satisfy certain
4 requirements to receive funding from hotel occupancy taxes; requiring certain reporting
5 from convention and visitor's bureaus; requiring triennial financial reviews of convention
6 and visitor's bureaus; clarifying that the State Auditor and Legislative Auditor may review
7 the operations and finances of a convention and visitor's bureau; prohibiting the
8 authorization of a new convention and visitor's bureau that does not satisfy certain
9 requirements; and clarifying that it is a misdemeanor offense for a member of a governing
10 body to facilitate the distribution of hotel occupancy tax proceeds to a convention and
11 visitor's bureau that does not satisfy certain requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. HOTEL OCCUPANCY TAX.

**§7-18-13a. Annual reports by convention and visitor's bureaus; eligibility for hotel
occupancy tax proceeds.**

1 (a) Each year, on or before August 15, On or before 90 days after the end of its fiscal year,
2 every convention and visitor's bureau which receives any appropriation of hotel occupancy tax
3 from one or more counties or municipalities shall file with each such county or municipality, the
4 State Auditor, the Joint Committee on Government and Finance, and the West Virginia
5 Association of Convention and Visitors Bureaus a ~~statement~~ report, including an income
6 statement and balance sheet, showing all amounts of hotel occupancy tax appropriated to the
7 convention and visitor's bureau and all expenditures of hotel occupancy tax made by the
8 convention and visitor's bureau for the prior fiscal year, as well as any such information required
9 by subsection (b) of this section. A convention and visitor's bureau that has not filed a report in
10 accordance with the provisions of this section shall be ineligible to receive additional
11 appropriations of hotel occupancy tax proceeds until such report has been filed.

12 (b) In order to qualify for a distribution of net proceeds pursuant to §7-18-14 of this code,
13 a convention and visitor's bureau shall satisfy the following requirements:

14 (1) The convention and visitor's bureau shall have a minimum annual budget;

15 (2) The convention and visitor's bureau shall establish a marketing plan targeting markets
16 outside of a 50-mile radius of the bureau's municipality or county of operation;

17 (3) The annual operating budget for the convention and visitor's bureau allocates
18 approximately 40 percent of annual revenues to advertising and marketing, approximately 40
19 percent to salaries and personnel, and approximately 20 percent to other operating expenses:

20 Provided, That a convention and visitor's bureau that allocates less than 40 percent of annual
21 revenues to salaries and personnel shall be considered to have satisfied the budget allocation
22 requirement;

23 (4) The convention and visitor's bureau has a full-time executive director that maintains
24 the minimum number of continuing education hours recommended annually by industry
25 standards;

26 (5) The convention and visitor's bureau has a physical office and/or visitor center that is
27 accessible at least 40 hours per week and has a dedicated phone line;

28 (6) The convention and visitor's bureau maintains a web site and appropriate marketing
29 materials;

30 (7) The convention and visitor's bureau has received accreditation from an accrediting
31 body; and

32 (8) The convention and visitor's bureau submits an annual report to all of its funding
33 entities, which shall include, but not be limited to, the information provided for in this subsection.

34 Nothing in this section may be construed as to interfere with the ability of a county or
35 municipality to enter into any agreements or partnerships with convention and visitor's bureaus in
36 neighboring counties or municipalities for the purposes of distributing net tax proceeds pursuant
37 to §7-18-14 of this code, so long as all other requirements of this section are met.

38 (c) At least once every three years, any bureau that receives any appropriation of hotel
39 occupancy tax from one or more counties or municipalities shall cause an audit or financial review,
40 in a form as is appropriate to the particular bureau, to be made by an independent certified public
41 accountant of all its books, accounts, and records relating to all receipts and expenditures of any
42 hotel occupancy tax appropriations for the three prior fiscal years of the bureau. A copy of the
43 audit or financial review shall be filed with each county or municipality from which the bureau
44 received an appropriation of hotel occupancy tax, the State Auditor, the Joint Committee on
45 Government and Finance, and the West Virginia Association of Convention and Visitors Bureaus.
46 After July 1, 2024, a bureau that has not caused such an audit or financial review to be made is
47 ineligible to receive an appropriation of hotel occupancy tax proceeds pursuant to §7-18-14 of this
48 code.

49 (d) In order to encourage counties and municipalities to work within the existing framework
50 of convention and visitor's bureaus, there shall be a moratorium on the authorization of new
51 convention and visitors bureaus until June 30, 2024. A county or municipality may not appropriate
52 any net proceeds of hotel occupancy taxes, pursuant to §7-18-14 of this code, to any convention
53 or visitor's bureau created on or after the amendments to this section enacted during the regular
54 session of the Legislature, 2021, and prior to the end of the moratorium imposed by this
55 subsection. On or after July 1, 2024, a county or municipality may authorize the creation of a new
56 convention and visitor's bureau so long as the bureau meets all of the requirements of subsection
57 (b) of this section.

58 (e) Nothing in this section may prohibit either the State Auditor or the Legislative Auditor
59 from conducting regular reviews or audits of the operations or finances of a convention and
60 visitor's bureau to ensure compliance with this code.

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

1 (a) Application of proceeds. — The net proceeds of the tax collected and remitted to the
2 taxing authority pursuant to this article shall be deposited into the general revenue fund of such

3 municipality or county commission and, after appropriation thereof, shall be expended only as
4 provided in this section.

5 (b) *Required expenditures.* — At least 50 percent of the net revenue receivable during the
6 fiscal year by a county or a municipality pursuant to this article shall be expended in the following
7 manner for the promotion of conventions and tourism:

8 (1) *Municipalities.* — If a convention and visitor’s bureau is located within the municipality,
9 county, or region, and has complied with the requirements of §7-18-13a of this code, the
10 governing body of such municipality shall appropriate the percentage required by this subsection
11 to that bureau. If a convention and visitor’s bureau is not located within such municipality, county
12 or region, or a bureau located within such municipality has not complied with the requirements of
13 §7-18-13a of this code, then the percentage appropriation required by this subsection shall be
14 appropriated as follows:

15 (A) Any hotel located within such municipality ~~county, or region~~ may apply to such
16 municipality for an appropriation to such hotel of a portion of the tax authorized by this article and
17 collected by such hotel and remitted to such municipality for uses directly related to the promotion
18 of tourism and travel, including advertising, salaries, travel, office expenses, publications, and
19 similar expenses. The portion of such tax allocable to such hotel shall not exceed 75 percent of
20 that portion of such tax collected and remitted by such hotel which is required to be expended
21 pursuant to this subsection: *Provided,* That prior to appropriating any moneys to such hotel, such
22 municipality shall require the submission of, and give approval to, a budget setting forth the
23 proposed uses of such moneys.

24 (B) If there is more than one convention and visitor’s bureau that is in compliance with the
25 requirements of §7-18-13a of this code located within a municipality, the city council may allocate
26 the tax authorized by this article to one or more of such bureaus in such portion as the city council
27 in its sole discretion determines.

28 ~~(C) The balance of net revenue required to be expended by this subsection shall be~~
29 ~~appropriated to the regional travel council serving the area in which the municipality is located.~~

30 (2) *Counties.* — If a convention and visitor's bureau is located within a county or region
31 and has complied with the requirements of §7-18-13a of this code, the county commission shall
32 appropriate the percentage required by this subsection to that convention and visitor's bureau. If
33 a convention and visitor's bureau is not located within such county or region, or a bureau located
34 within the county or region has not complied with the requirements of §7-18-13a of this code, then
35 the percentage appropriation required by this subsection shall be appropriated as follows:

36 (A) Any hotel located within ~~such~~ the county or region may apply to ~~such~~ the county for an
37 appropriation to ~~such~~ the hotel of a portion of the tax authorized by this article and collected by
38 ~~such~~ the hotel and remitted to ~~such~~ the county for uses directly related to the promotion of tourism
39 and travel, including advertising, salaries, travel, office expenses, publications, and similar
40 expenses. The portion of ~~such~~ the tax allocable to ~~such~~ the hotel shall ~~may~~ not exceed 75 percent
41 of that portion of ~~such~~ the tax collected and remitted by ~~such~~ the hotel which is required to be
42 expended pursuant to this subsection: *Provided,* That prior to appropriating any moneys to ~~such~~
43 the hotel, ~~such~~ the county shall require the submission of, and give approval to, a budget setting
44 forth the proposed uses of such moneys.

45 (B) If there is more than one convention and visitor's bureau that is in compliance with the
46 requirements of §7-18-13a of this code located within a county or region, the county commission
47 may allocate the tax authorized by this article to one or more of ~~such~~ the bureaus in such portion
48 as the county commission in its sole discretion determines.

49 ~~(C) The balance of net revenue required to be expended by this subsection shall be~~
50 ~~appropriated to the regional travel council serving the area in which the county is located~~

51 (3) *Legislative finding.* — The Legislature hereby finds and declares that in order to attract
52 new business and industry to this state and to retain existing business and industry all to provide
53 the citizens of the state with economic security and to advance the business prosperity and

54 economic welfare of this state, it is necessary to enhance recreational and tourism opportunities.
55 Therefore, in order to promote recreation and tourism, the Legislature finds that public financial
56 support should be provided for constructing, equipping, improving, and maintaining projects,
57 agencies, and facilities which promote recreation and tourism. The Legislature also finds that the
58 support of convention and visitor's bureaus and hotels ~~and regional travel councils~~ is a public
59 purpose for which funds may be expended. Local convention and visitor's bureaus and hotels ~~and~~
60 ~~regional travel councils~~ receiving funds under this subsection may expend ~~such~~ the funds for the
61 payment of administrative expenses, and for the direct or indirect promotion of conventions and
62 tourism, and for any other uses and purposes authorized by this subsection.

63 (c) *Permissible expenditures.* — After making the appropriation required by subsection (b)
64 of this section, the remaining portion of the net revenues receivable during the fiscal year by ~~such~~
65 the county or municipality, pursuant to this article, may be expended for one or more of the
66 purposes set forth in this subsection, but for no other purpose. The purposes for which
67 expenditures may be made pursuant to this subsection are as follows:

68 (1) The planning, construction, reconstruction, establishment, acquisition, improvement,
69 renovation, extension, enlargement, equipment, maintenance, repair, and operation of publicly
70 owned convention facilities, including, but not limited to, arenas, auditoriums, civic centers, and
71 convention centers;

72 (2) The payment of principal or interest or both on revenue bonds issued to finance ~~such~~
73 the convention facilities;

74 (3) The promotion of conventions;

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

77 (5) The promotion of the arts;

78 (6) Historic sites;

79 (7) Beautification projects;

80 (8) Passenger air service incentives and subsidies directly related to increasing passenger
81 air service availability to tourism destinations in this state;

82 (9) Medical care and emergency services in any county where:

83 (A) There is an urgent necessity to preserve the delivery of acute medical care and
84 emergency services;

85 (B) There is an increase in need for acute medical care and emergency services directly
86 related to tourism;

87 (C) Recurrent flooding in the county significantly disrupts, on a periodic basis, the delivery
88 of acute medical care and emergency services;

89 (D) There is an inadequate economic base within the county from any source other than
90 tourism to preserve the delivery of acute medical care and emergency services;

91 (E) There is an inadequate economic base directly related to low population in the county,
92 specifically, a population of less than 10,000 persons according to the most recent decennial
93 census taken under the authority of the United States;

94 (F) There is no more than one hospital within the county; and

95 (G) The county commission makes specific findings, by resolution, that all of the foregoing
96 conditions within the county exist;

97 (10) Support and operation of the Hatfield-McCoy Recreation Area by the participating
98 county commissions in the Hatfield-McCoy Regional Recreational Authority; or

99 (11) Support and operation of economic development activities, including site
100 development, facilities, and infrastructure in an amount not to exceed \$200,000.

101 (d) *Definitions.* — For purposes of this section, the following terms are defined:

102 (1) *Convention and visitor's bureau and visitor's and convention bureau.* — "Convention
103 and visitor's bureau" and "visitor's and convention bureau" are interchangeable and either shall
104 mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote
105 tourism and to attract conventions, conferences, and visitors to the municipality, county, or region

106 in which ~~such~~ the convention and visitor's bureau or visitor's and convention bureau is located or
107 engaged in business within.

108 (2) *Convention center*. — "Convention center" means a convention facility owned by the
109 state, a county, a municipality, or other public entity or instrumentality and shall include all
110 facilities, including armories, commercial, office, community service, and parking facilities and
111 publicly owned facilities constructed or used for the accommodation and entertainment of tourists
112 and visitors, constructed in conjunction with the convention center and forming reasonable
113 appurtenances thereto.

114 (3) *Fiscal year*. — "Fiscal year" means the year beginning July 1 and ending June 30 of
115 the next calendar year.

116 (4) *Net proceeds*. — "Net proceeds" means the gross amount of tax collections less the
117 amount of tax lawfully refunded.

118 (5) *Promotion of the arts*. — "Promotion of the arts" means activity to promote public
119 appreciation and interest in one or more of the arts. It includes the promotion of music for all types,
120 the dramatic arts, dancing, painting, and the creative arts through shows, exhibits, festivals,
121 concerts, musicals, and plays.

122 (6) *Recreational facilities*. — "Recreational facilities" means and includes any public park,
123 parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink
124 or arena, golf course, tennis courts, and other park and recreation facilities, whether of a like or
125 different nature, that are owned by a county or municipality.

126 (7) *Region*. — "Region" means an area consisting of one or more counties or municipalities
127 that have agreed by contract to fund a convention and visitor's bureau to promote those counties
128 or municipalities.

129 ~~(8) *Regional travel council*. — "Regional travel council" means a nonstock, nonprofit~~
130 ~~corporation, with a full-time staff working exclusively to promote tourism and to attract~~

131 ~~conventions, conferences, and visitors to the region of this state served by the regional travel~~
132 ~~council.~~

133 ~~(9)~~ (8) *Historic site*. — “Historic site” means any site listed on the United States National
134 Register of Historic Places, or listed by a local historical landmarks commission, established under
135 state law, when ~~such~~ the sites are owned by a city, a county, or a nonprofit historical association
136 and are open, from time to time, to accommodate visitors.

137 (e) Any member of a governing body who willingly and knowingly votes to or causes to be
138 expended moneys generated by the provisions of this section for purposes other than specifically
139 set forth in this section, or who approves of or otherwise facilitates the distribution of net proceeds
140 to a convention and visitor’s bureau failing to meet the requirements of §7-18-13a(b) of this code,
141 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100.