

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Senate Bill 488

BY SENATORS MAYNARD AND WOODRUM

[Passed April 8, 2021; in effect 90 days from passage

(July 7, 2021)]

1 AN ACT 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) On or before 90 days after the end of its fiscal year, every convention and visitor's
2 bureau which receives any appropriation of hotel occupancy tax from one or more counties or
3 municipalities shall file with each such county or municipality, the State Auditor, the Joint
4 Committee on Government and Finance, and the West Virginia Association of Convention and
5 Visitors Bureaus a report, including an income statement and balance sheet, showing all amounts
6 of hotel occupancy tax appropriated to the convention and visitor's bureau and all expenditures
7 of hotel occupancy tax made by the convention and visitor's bureau for the prior fiscal year, as
8 well as any such information required by subsection (b) of this section. A convention and visitor's
9 bureau that has not filed a report in accordance with the provisions of this section shall be
10 ineligible to receive additional appropriations of hotel occupancy tax proceeds until such report
11 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 website 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 may apply to such municipality for an
16 appropriation to such hotel of a portion of the tax authorized by this article and collected by such
17 hotel and remitted to such municipality for uses directly related to the promotion of tourism and
18 travel, including advertising, salaries, travel, office expenses, publications, and similar expenses.
19 The portion of such tax allocable to such hotel shall not exceed 75 percent of that portion of such
20 tax collected and remitted by such hotel which is required to be expended pursuant to this
21 subsection: *Provided*, That prior to appropriating any moneys to such hotel, such municipality
22 shall require the submission of, and give approval to, a budget setting forth the proposed uses of
23 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 (2) *Counties.* — If a convention and visitor’s bureau is located within a county or region
29 and has complied with the requirements of §7-18-13a of this code, the county commission shall
30 appropriate the percentage required by this subsection to that convention and visitor’s bureau. If
31 a convention and visitor’s bureau is not located within such county or region, or a bureau located
32 within the county or region has not complied with the requirements of §7-18-13a of this code, then
33 the percentage appropriation required by this subsection shall be appropriated as follows:

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

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

46 (3) *Legislative finding.* — The Legislature hereby finds and declares that in order to attract
47 new business and industry to this state and to retain existing business and industry all to provide
48 the citizens of the state with economic security and to advance the business prosperity and
49 economic welfare of this state, it is necessary to enhance recreational and tourism opportunities.
50 Therefore, in order to promote recreation and tourism, the Legislature finds that public financial
51 support should be provided for constructing, equipping, improving, and maintaining projects,
52 agencies, and facilities which promote recreation and tourism. The Legislature also finds that the
53 support of convention and visitor’s bureaus and hotels is a public purpose for which funds may

54 be expended. Local convention and visitor's bureaus and hotels receiving funds under this
55 subsection may expend the funds for the payment of administrative expenses, and for the direct
56 or indirect promotion of conventions and tourism, and for any other uses and purposes authorized
57 by this subsection.

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

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

67 (2) The payment of principal or interest or both on revenue bonds issued to finance the
68 convention facilities;

69 (3) The promotion of conventions;

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

72 (5) The promotion of the arts;

73 (6) Historic sites;

74 (7) Beautification projects;

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

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

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

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

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

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

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

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

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

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

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

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

97 (1) *Convention and visitor's bureau and visitor's and convention bureau.* — “Convention
98 and visitor's bureau” and “visitor's and convention bureau” are interchangeable and either shall
99 mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote
100 tourism and to attract conventions, conferences, and visitors to the municipality, county, or region
101 in which the convention and visitor's bureau or visitor's and convention bureau is located or
102 engaged in business within.

103 (2) *Convention center.* — “Convention center” means a convention facility owned by the
104 state, a county, a municipality, or other public entity or instrumentality and shall include all
105 facilities, including armories, commercial, office, community service, and parking facilities and

106 publicly owned facilities constructed or used for the accommodation and entertainment of tourists
107 and visitors, constructed in conjunction with the convention center and forming reasonable
108 appurtenances thereto.

109 (3) *Fiscal year*. — “Fiscal year” means the year beginning July 1 and ending June 30 of
110 the next calendar year.

111 (4) *Net proceeds*. — “Net proceeds” means the gross amount of tax collections less the
112 amount of tax lawfully refunded.

113 (5) *Promotion of the arts*. — “Promotion of the arts” means activity to promote public
114 appreciation and interest in one or more of the arts. It includes the promotion of music for all types,
115 the dramatic arts, dancing, painting, and the creative arts through shows, exhibits, festivals,
116 concerts, musicals, and plays.

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

121 (7) *Region*. — “Region” means an area consisting of one or more counties or municipalities
122 that have agreed by contract to fund a convention and visitor’s bureau to promote those counties
123 or municipalities.

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

128 (e) Any member of a governing body who willingly and knowingly votes to or causes to be
129 expended moneys generated by the provisions of this section for purposes other than specifically
130 set forth in this section, or who approves of or otherwise facilitates the distribution of net proceeds

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131 to a convention and visitor's bureau failing to meet the requirements of §7-18-13a(b) of this code,
132 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2021.

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Governor