

2013 DRAFTING REQUEST

Bill

Received: 3/1/2013 Received By: mshovers
Wanted: As time permits Same as LRB: -2963
For: Luther Olsen (608) 266-0751 By/Representing: Amy
May Contact: Drafter: mshovers
Subject: Local Gov't - room tax Addl. Drafters:
Extra Copies: EVM

Submit via email: YES
Requester's email: Sen.Olsen@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Modifications to the local room tax

Instructions:

See attached. Redraft 2011 SB 438 with attached changes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 5/6/2013	jdyer 5/7/2013	rschlue 5/7/2013	_____			
/P1	mshovers 7/2/2013			_____	sbasford 5/7/2013		State S&L
/P2	mshovers 7/22/2013	jdyer 7/9/2013	jfrantze 7/9/2013	_____	lparisi 7/9/2013		State S&L
/1	mshovers	jdyer	phenry	_____	srose		State

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	7/31/2013	7/29/2013	7/29/2013	_____	7/29/2013		S&L
/2		jdyer 8/1/2013	phenry 8/1/2013	_____	lparisi 8/1/2013	srose 8/19/2013	State S&L

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7/29/2013

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1?	mshovers	PI 3/7 jld					
1	PI NES	5/6/13					

FE Sent For:

<END>

Summary of Changes to AB 563/SB 438 from Last

Session

4/30/13

this version removed
CRJ 66.0615 (1m) (d) 9
from the draft

1. Add one word: Tourism Promotion & "Tourism" Development
2. Include a clarification that a Tourism Entity contracted by a Commission is not subject to the majority tourism representation stipulations.
3. Increase the Grandfather Clause Phase-Out timing from 3 to 6 years (double the original allotment)
4. Replace the litigation component with a Mediation component:

if done
findings
is the
upset
not needed

- Both a Tourism Entity and a tourism-related organization who believes that a municipality is not allocating or spending room tax in compliance with 66.0615 would be eligible to file a written "**Room Tax Allocation/Expenditure Statutory Compliance Complaint**" with a municipality. *New Note: If needed, a specification of who creates this complaint form that should be used could be noted (DOR or DO)?*
- The municipality would be provided **60 days to respond** in writing how they are compliant with 66.0615 relating to the complaint.
- Should the complainant not receive this response or feel that the response does not show compliance with 66.0615, they may **request retention of a professional mediator** with the municipality.
- A **professional mediator** may be chosen and retained first by either party, however, the party choosing would bear the costs of the mediator. If both parties wish to determine a mediator, the costs shall be paid by the complainant if the mediator determines compliance with 66.0615, or by the municipality if they are found not in compliance, or by both equally if no finding on compliance is determined.
- The findings of the mediator shall be shared with both parties, and will be subject to open records law, however the findings shall not be binding. Should the **findings/recommendations of the mediator be adhered to, no litigation relating to this complaint may be pursued.**
- Should the **findings of the mediator not be adhered to** by the municipality, then litigation may be pursued by the complainant.

- Should the **municipality not agree to mediation** as requested by the complainant following the 60 days, then litigation may be pursued by the complainant.
5. Modify the Tourism Entity definition to only include organizations established prior to January 1, 2013, unless no such organization existed in the area as of that date
 6. Clarify that the 3% retention for lodging properties to cover their card processing costs is based upon timely submission of room tax revenues. Also clarify that it would be 3% or a higher percentage authorized by the municipality.

Shovers, Marc

From: Bruce, Cory
Sent: Wednesday, April 17, 2013 2:28 PM
To: Shovers, Marc; Trisha Pugal (pugal@wisconsinlodging.org); Harriman, Amy; Kathi Kilgore (Kilgore@swandby.com); jhertel@escapetowisconsin.com
Subject: FW: Room Tax Reform Change
Attachments: Room Tax Reform Arbitration Component Change.docx

Marc,

Attached you'll find a change to the room tax bill to address the concerns you raised about arbitration. This offers an opportunity for parties to enter into mediation before pursuing litigation as a last resort.

Please let us know if you have any questions. Tricia Pugal may follow up with you directly on this, but in case you have questions you can reach her at: 262-782-2851.

Thanks,
Cory
Bies Office

Room Tax Reform – Arbitration Component Change

Due to the drafter stating arbitration is not an option as there is no contract with room tax, the following is the new proposal:

- Both a Tourism Entity and a tourism-related organization who believes that a municipality is not allocating or spending room tax in compliance with 66.0615 would be eligible to file a written **“Room Tax Allocation/Expenditure Statutory Compliance Complaint”** with a municipality.
- The municipality would be provided **60 days to respond** in writing how they are compliant with 66.0615 relating to the complaint.
- Should the complainant not receive this response or feel that the response does not show compliance with 66.0615, they may **request retention of a professional mediator** with the municipality.
- A **professional mediator** may be chosen and retained first by either party, however, the party choosing would bear the costs of the mediator. If both parties wish to determine a mediator, the costs shall be paid by the complainant if the mediator determines compliance with 66.0615, or by the municipality if they are found not in compliance, or by both equally if no finding on compliance is determined.
- The findings of the mediator shall be shared with both parties, and will be subject to open records law, however the findings shall not be binding. Should the **findings/recommendations of the mediator be adhered to, no litigation relating to this complaint may be pursued.**
- Should the **findings of the mediator not be adhered to** by the municipality, then litigation may be pursued by the complainant.
- Should the **municipality not agree to mediation** as requested by the complainant following the 60 days, then litigation may be pursued by the complainant.

needed

What does this compromise accomplish?

1. Instead of instant litigation, a written complaint directly tied into compliance with state statute is required, with a reasonable 60-day response time
2. Mediation would be an added option, providing an opportunity to avoid more costly litigation. It would not be required, but if rejected, does allow for litigation.
3. If the mediator finds the complaint unfounded, not only can the municipality avoid paying for mediation, but the ability to litigate is removed.

4/16/13T

Shovers, Marc

From: Harriman, Amy
Sent: Tuesday, February 26, 2013 5:53 PM
To: Shovers, Marc
Subject: Bill Draft Request

Senator Olsen would like to redraft 2011 Senate Bill 438 with the following changes:

- 1- ~~Revise~~ the wording from "tourism promotion and development" to "tourism promotion and tourism development" to improve clarity.
- 2- Require that if a municipality is imposing a Room Tax that they are required to submit an annual report on the previous year's tax rate and usage to the Department of Revenue.
- 3- Provide a process for unbiased arbitration should a municipality, Tourism Commission, or Tourism Entity not follow the state statute, and provide a dis-incentive for pursuing unfounded claims. This is to provide accountability in the taxation if there is a misuse of Room Tax revenue.
- 4- Phase out (Sunset?) the current exemption that allows municipalities to retain more than 30 percent of the room tax collected, giving 6 years to proportionately reduce their overage so that after six years all Wisconsin municipalities would retain no more than 30 percent of room tax revenue

NO - this is a defined term in the statutes change the def if it suits your intent

*10R:
D, 66.0217(b) ?*

If you have any questions or concerns, please feel free to call or email me.

Thanks,

Amy Harriman

Senator Luther Olsen

14th Senate District

608-266-0751

amy.harriman@legis.wisconsin.gov

DRAFT – 1/31/13

Delete the litigation component of 2011 SB 438 starting on page 7, line 18. Replace with an arbitration provision as follows:

1. Provide that a tourism entity or “tourism organization” (as defined below) may file a complaint with a municipality alleging that the municipality is not allocating the room tax revenues it receives as required under this section, or that a tourism commission is not using the room tax revenue as required under this section, or both. A copy of the complaint shall also be filed in circuit court.
2. Provide that a “tourism organization” may file a complaint with a tourism entity alleging that the entity is not using the room tax revenue as required under this section. A copy of the complaint shall also be filed in circuit court.
3. Definition of a “tourism organization”: In this subsection, “tourism organization” means a statewide organization that represents tourism entities, a statewide organization that represents the lodging industry, or an owner or operator, or group of owners and operators, of a lodging facility or facilities that collect the room tax described in this section and which is or are located in the municipality for which the room tax is collected.
4. Provide that if the complaint is not satisfactorily remedied within 60 days a tourism entity or tourism organization may submit the issue to arbitration to the circuit court. The arbitration shall be by a single arbitrator appointed by the court. *[Reference or patterned after s. 788.04 (1)] ch. 788 only applicable*
5. The decision of the arbitrator is binding and shall determine whether the municipality is allocating, or the commission or tourism entity is using, the room tax revenue it receives as required under this section. If the arbitrator determines that the municipality is not allocating, or the commission is not using, the room tax revenue in accordance with this section, the arbitrator shall determine the amount of room tax revenue that is not being lawfully allocated by the municipality or used by the commission. This amount must be repaid to tourism promotion and tourism development in the next budget adopted by the municipality.
6. If the arbitrator determines a tourism entity is not using the room tax revenue in accordance with this section, the municipality shall create a commission. The municipality shall, for a period of time determined by the arbitrator, forward to the commission all room tax revenue that it may not retain. The commission may either spend the revenue directly, or it may forward the revenue to the entity. Upon expiration of the period of time determined by the arbitrator for room tax revenue to be forwarded to the commission, the municipality may resume forwarding the room tax revenue it may not retain directly to the tourism entity.

ark.
University of
Arkansas

66.0309
88.14
84.08

can/cant
be appealed?

P. 788-12
(inserted in)
NO COSTS
8/14/12

2.

7. If the arbitrator finds that room tax revenues are not being allocated by a municipality, or used by a commission or tourism entity, as required under this section, the arbitrator shall require the municipality or the commission to take corrective action and provide for the lawful allocation or use of room tax revenue in the next budget adopted by the municipality. The arbitrator's finding shall be in writing and must be signed by the arbitrator and filed with the court. If the corrective action is not taken in the next municipal budget, any party to the arbitration may apply to the court for an order confirming the corrective action, and thereupon the court must grant such an order requiring the municipality or commission to take corrective action.

)
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under
COURT
auspices

8. If the arbitrator determines that the municipality is not allocating room tax revenue as required under this section, or that the commission or tourism entity is not using room tax revenue as required under this section, the expenses of arbitration shall be paid by the municipality, or in equal shares by the municipalities that created the commission, or in the case of a tourism entity the expenses shall be paid by the tourism entity without using room tax revenue. If the arbitrator determines that the municipality is allocating room tax revenue as required under this section, and/or that a commission or tourism entity is using room tax revenue as required under this section, the expenses of arbitration shall be paid by the tourism entity or tourism organization that filed for arbitration.

ROOM TAX REFORM QUESTIONS

He needs substantial policy decisions on the unbiased arbitration point, his notes were:

What kind of a process did you have in mind? I'll need a lot more detailed information on this provision

Please see the attached suggested components, and also refer to state Chapter 788 on Arbitration for precedent language.

Who selects the arbitrator? Just one, or a panel?

Chapter 788.04 (2) b addresses this concept for the court to select an arbitrator. One should be all that is needed.

Who pays?

See #8 in the attached Arbitration Jan. 31 suggestions we submitted.

Are there any kind of standards in the world of arbitration that you'd like to apply?

Chapter 788 should provide any precedent options that may be necessary.

Can one side force arbitration if the other side believes agreement can be reached with further dialog?

If the challenger is not satisfied in the 60 days provided, yes they can require arbitration (see #4 in the attached)

What kind of "dis-incentive" do you want to provide?

The major dis-incentive is that nobody would file a complaint unless they were confident an arbitrator would agree, as they would be liable to pay for the arbitrator costs if not. And there is an incentive for the challenged municipality or entity to comply with the law and remedy the complaint, or they could have to pay arbitrator costs.

What is an "unfounded claim"? [It's likely that one side may not think their claim is "unfounded.]"

Basically, this is addressed with the incentive/dis-incentive outlined in #8 in the attached.

What is the goal of an arbitration proceeding instead of just letting one party take the other party to court if it believes there is a misuse of room tax revenue.

Arbitration was proposed as a less costly alternative to litigation, which had been opposed by municipalities. The goal is to provide accountability in as reasonable a manner as possible.

Are there any limits to the type of issues that the party can submit to arbitration, or could any dispute lead to arbitration, whether it's alleged misuse of tax revenues or a disagreement on an advertising campaign?

For arbitration, there must be a challenge to statutory compliance with state statute 66.0615 on room tax.

Shovers, Marc

From: Bruce, Cory
Sent: Tuesday, March 19, 2013 4:11 PM
To: Shovers, Marc
Subject: Room Tax Bill
Attachments: Arbitration Jan31 2013.docx; ROOM TAX REFORM QUESTIONS.docx

Hi Marc,

I put in a request in January that we'd like to run a companion of Senator Olsen's room tax bill. We've been working with their office and other interested organizations to find compromises to move the bill forward this legislative session. It's our understanding you had some questions regarding the mediation process. I'm attaching two documents that should help answer some of your questions. The one from January 31st should have been sent to you before, but I'm guessing it wasn't based on the questions you have. The other attachment answers your questions directly by referring back to the January 31st document.

I know you guys are swamped, and if you didn't get that January 31st document before now, that's our fault. And here comes the BUT... But one of the groups we've been working with on this has their legislative day April 11th and we'd like for them to have a draft to share with their members in hopes of getting support when they meet with their legislators. So if that's at all doable I would greatly appreciate it.

Please let me know if you have any questions and thanks for your consideration for hurrying this along.

Sincerely,
Cory Bruce
Office of Rep. Bies

Shovers, Marc

From: Bruce, Cory
Sent: Wednesday, April 10, 2013 8:05 PM
To: Shovers, Marc; Harriman, Amy
Cc: Nelson, Robert; Hurley, Peggy
Subject: RE: room tax bill update

Marc,
Thank you for all your work on this bill and trying to get it done for us by a certain date. After reading your email, it's clear we'll have to think of other possibilities. Amy and I will share this with Tricia and Pat and get back to you once we have an idea of how we'd like to proceed.

Thanks again Marc.

Cory

From: Shovers, Marc
Sent: Wed 4/10/2013 3:38 PM
To: Bruce, Cory; Harriman, Amy
Cc: Nelson, Robert; Hurley, Peggy
Subject: RE: room tax bill update

Hello Amy and Cory:

I have not yet spoken to Pat Osborne, but I've spent some more time talking to my colleagues who draft in the areas of arbitration and courts and procedure and, based on their research, I don't think it's possible to include arbitration provisions in this bill.

A recent decision of the Wisconsin Supreme Court, *Marlowe v. IDS Ins. Co.*, 2013 WI 29, cites a number of other state supreme court cases that all seem to stand for the proposition that arbitration is a creature of contract and that an arbitrator may act only pursuant to the parameters of a contract between the parties, certain provisions of which are in dispute. In other words, the role of the arbitrator is to resolve disputes that arise under a contract between two or more parties. But because there is no underlying contractual relationship between a municipality that imposes a room tax, or a commission that spends room tax revenues, and the tourism organization that may file a complaint as described in the drafting instructions, there is no basis for an arbitration. If there's no contract between the parties, the arbitrator has nothing to arbitrate.

The dissent in *Marlowe* cites a previous Wisconsin Supreme Court decision in which the court held that "[a]n arbitrator obtains authority only from the contract of the parties and therefore is confined to the interpretation of that contract." *Marlowe* at paragraph 90, citing *Lukowski v. Dankert*, 184 Wis. 2d 142 (1994). Other parts of the *Marlowe* decision cite the case *Borst v. Allstate Ins. Co.*, 2006 WI 70, 291 Wis. 2d 361, for the proposition that "arbitration is a matter of contract" (*Marlowe*, paragraph 28) and that arbitrators have no inherent authority other than that contained in ch. 788 of the Wisconsin statutes or in the express agreement between the parties (*Marlowe*, paragraph 28). Again, because there is no contractual relationship between the tourism organization and the party against whom the organization wants to file a complaint, there is no basis for an arbitration.

Please let me know how you'd like me to proceed on this draft.

Thanks,

Marc

Marc Shovers
Managing Attorney
Legislative Reference Bureau
608-266-0129
marc.shovers@legis.wisconsin.gov

From: Bruce, Cory
Sent: Wednesday, April 10, 2013 9:43 AM
To: Shovers, Marc
Subject: RE: room tax bill update

Thanks Marc.

Cory

From: Shovers, Marc
Sent: Tuesday, April 09, 2013 5:09 PM
To: Bruce, Cory; Harriman, Amy
Subject: room tax bill update

Hi Cory and Amy:

I was able to reach Trisha Pugel and we were able to resolve some of the concerns I had, but we're still not sure how the arbitrator should be picked. There's really no way to involve a judge in picking an arbitrator because there's no legal action at issue – Trisha's goal with the arbitration provision is to try and avoid litigation. Trisha suggested that I contact Pat Osborne directly and see if he has any ideas on this issue. I'll keep you posted on my progress. Thanks.

Marc

Marc Shovers
Managing Attorney
Legislative Reference Bureau
608-266-0129
marc.shovers@legis.wisconsin.gov

~~Handwritten scribbles~~

Trisha Pugel
262 943 2851

Mr. Pat Osborne - Hamilton Consulting
608-258-9506

1) change the definition to tourism project
tourism development

2) Key - find a more reasonable option than
litigation

uniform complaint form - created by DOR?

muni gets 60 days to answer

if no agreement, parties must arbitrate

Risk is on both parties; loser pays arb.
costs + costs incurred by muni if muni wins

how is arbitrator chosen?

binding? can a party appeal -> circuit?

consequences if arb. order not followed? can
party file arb. order w/ circuit for enforcement?

can arb/ "req" parties to take corrective action &
properly allocate room tax revenue?

must
the
act



-1901/PI



LRB-212074

MES: [unclear] jld:jm

2013 ~~2011~~ SENATE BILL 438

PMNR ↑ KEEP

PWF

WANTED
MAMM

TODAY

February 7, 2012 - Introduced by Senators OLSEN, HOLPERIN and SCHULTZ, cosponsored by Representatives BIES, AUGUST, BALLWEG, BROOKS, CLARK, A. OTT, PETERSEN, TRANEL, VAN ROY, VOS and WYNN. Referred to Committee on Workforce Development, Small Business, and Tourism.

4

gen

- 1 AN ACT *to amend* 66.0615 (1) (f), 66.0615 (1m) (a), 66.0615 (1m) (c) 1., 66.0615
- 2 (1m) (c) 2. a., 66.0615 (1m) (d) 1. and 66.0615 (1m) (d) 2.; and *to create* 66.0615
- 3 (1m) (d) 8., 66.0615 (1m) (d) 9., 66.0615 (1m) (dm) and 66.0615 (4) and (5) of the
- 4 statutes; **relating to:** changes to the local room tax ~~and providing a penalty.~~

Analysis by the Legislative Reference Bureau

Under current law, a city, village, or town (municipality) and a local exposition district may impose a room tax. The room tax is a tax on the privilege of furnishing, at retail, rooms or lodging to transients by hotelkeepers, motel operators, and other persons who furnish accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations.

Generally, the maximum room tax that a municipality may impose is 8 percent. A single municipality that imposes a room tax may create a commission, which is defined as an entity to coordinate tourism promotion and development (tourism). If two or more municipalities in a zone impose a room tax, they must create a commission. Current law defines a zone as an area made up of two or more municipalities that, those municipalities agree, is a single destination as perceived by the traveling public.

Current law requires a commission to contract with an organization to provide staff, development, or promotional services for the tourism industry in a municipality if a tourism entity does not exist in that municipality. A tourism entity is defined under current law as a nonprofit organization that existed before January 1, 1992, and provides staff, development, or promotional services for the tourism

SENATE BILL 438

industry in a municipality. The bill changes the definition of tourism entity to be a nonprofit organization that spends at least 51[✓] percent of its revenue on tourism promotion and development and provides destination marketing staff and services for the tourism industry in a municipality without regard to when the entity came into existence. *Also under the bill, a tourism entity must have come into existence before January 1, 2013.*

Under the bill, the majority of the members of a commission, *and the majority of the members of the governing body of a tourism entity that spends between 51 percent and 70 percent of its revenue on tourism promotion and development,* must be owners or operators of restaurants, tourist attractions, or lodging facilities *which* collect the room tax, *and which are located in the municipality for which the room tax is collected.* Also under the bill, the governing body of a tourism entity must include at least one owner or operator of a lodging facility in the municipality for which the room tax is collected.

Under current law, a municipality that first imposes a room tax after May 13, 1994, must spend at least 70[✓] percent of the amount collected on tourism; the expenditure may be spent directly by the municipality or forwarded to the commission for its municipality or zone. The 30[✓] percent or less of the room tax revenue that is not spent on tourism may be retained by the municipality and used for any other purpose. If a municipality collected a room tax on May 13, 1994, it may retain up to the same percentage of the room tax that it retained on that date, even if that percentage is more than 30 percent.

Under this bill, any revenue that is not retained by the municipality must be forwarded to a tourism entity or a commission, although the person collecting the room tax may retain 3 percent of the tax collected. *Also under the bill, a municipality that retains more than 30 percent of the room tax must reduce the amount that it retains to no more than 30 percent. The reduction must be made in equal amounts over a three-year period beginning on January 1, 2015.*

The bill requires municipalities annually to certify and report to the Department of Revenue (DOR) the amount of room tax revenue collected by the municipality in the previous year as well as a detailed accounting of amounts that were forwarded to a commission or tourism entity and such an accounting for amounts of at least \$1,000[✓] expended by a commission or tourism entity. DOR is required to collect the reports and make them available to the public. In addition, the report must identify the members of a commission or tourism entity, and their business or employment affiliation, if any.

✓ This bill authorizes an individual to bring a circuit court action alleging that the municipality in which he or she resides is not allocating room tax revenue as required by the statutes, or that a commission or tourism entity which receives room tax revenue from such a municipality is not using the revenue as required by statute. The bill also authorizes any other person who is affected by tourism in that municipality to bring such an action. If the person bringing such an action prevails, the circuit court may order a municipality, commission, or tourism entity to comply with the statutes relating to the allocation and use of room tax revenue, may require a municipality to repay a tourism entity or commission any amounts that should have been so allocated, and may impose a forfeiture on a municipality for violating

And the room tax rate imposed,

or a higher percentage if authorized by the municipality, to cover the person's credit card processing fees

SENATE BILL 438

~~such statutes. If the court determines that a tourism entity is not using room tax revenue according to the statute, the municipality must create a commission to oversee the expenditure of room tax revenue. If the court determines that a commission is not in compliance with the statute, the elected official who appointed the commission members must dismiss all members of the commission and appoint new commissioners. The court must also award the prevailing plaintiff costs and reasonable attorney fees.~~

INS ANL

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 66.0615 (1) (f) of the statutes is amended to read:

66.0615 (1) (f) "Tourism entity" means a nonprofit organization that came into existence before January 1, 1992, and provides staff, development or promotional spends at least 51 percent of its revenues on tourism promotion and development, and provides destination marketing staff and services for the tourism industry in a municipality.

SECTION 2. 66.0615 (1m) (a) of the statutes is amended to read:

66.0615 (1m) (a) The governing body of a municipality may enact an ordinance, and a district, under par. (e), may adopt a resolution, imposing a tax on the privilege of furnishing, at retail, except sales for resale, rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations. A tax imposed under this paragraph is not subject to the selective sales tax imposed by s. 77.52 (2) (a) 1. and may not be imposed on sales to the federal government and persons listed under s. 77.54 (9a). A tax imposed under this paragraph by a municipality shall be paid to the municipality and may, with regard to any tax revenue that may not be retained by the municipality, shall be

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✓ or a higher percentage, as determined by the municipality, to cover the person's credit card processing costs

1 forwarded to a tourism entity or a commission if one is created under par. (c), as
2 provided in par. (d), except that before the person collecting the tax pays it to the
3 municipality, the person may retain 3 percent of the tax collected. Except as provided
4 in par. (am), a tax imposed under this paragraph by a municipality may not exceed
5 8%. Except as provided in par. (am), if a tax greater than 8% under this paragraph
6 is in effect on May 13, 1994, the municipality ^(S) imposing the tax shall reduce the tax
7 to 8%, effective on June 1, 1994.

*** NOTE: do you want to impose a maximum withholding amount for credit card processing amounts?

8 SECTION 3. 66.0615 (1m) (c) 1. of the statutes is amended to read:

9 66.0615 (1m) (c) 1. If a commission is created by a single municipality, the
10 commission shall consist of 4 to 6 members. One At least one of the commission
11 members shall represent the Wisconsin hotel and motel industry. Members shall be
12 appointed under subd. 3. A majority of the members of a commission shall be owners
13 or operators of restaurants, tourist attractions, or lodging facilities ^{e that} which collect the
14 room tax described in this section ^{or} and which are located in the municipality for
15 which the room tax is collected.

16 SECTION 4. 66.0615 (1m) (c) 2. a. of the statutes is amended to read:

17 66.0615 (1m) (c) 2. a. If the commission is created by more than one
18 municipality in a zone, the commission shall consist of 3 members from each
19 municipality in which annual tax collections exceed \$1,000,000, 2 members from
20 each municipality in which annual tax collections exceed \$300,000 but are not more
21 than \$1,000,000 and one member from each municipality in which annual tax
22 collections are \$300,000 or less. A majority of the members of a commission shall be
23 owners or operators of restaurants, tourist attractions, or lodging facilities ^{e that} which
24 collect the room tax described in this section ^{or} and which are located in the

SENATE BILL 438

1 municipalities for which the room tax is collected. Except as provided in subd. 2. b.,
2 members shall be appointed under subd. 3.

3 SECTION 5. 66.0615 (1m) (d) 1. ^X of the statutes is amended to read:

4 66.0615 (1m) (d) 1. A municipality that first imposes a room tax under par. (a)
5 after May 13, 1994, shall spend at least 70% of the amount collected on tourism
6 promotion and ^{tourism} development. Any amount of room tax collected that must be spent
7 on tourism promotion and ^{tourism} development shall either be ~~spent directly by the~~
8 ~~municipality on tourism promotion and development or shall be~~ forwarded to the
9 commission for its municipality or zone if the municipality has created a commission,
10 or forwarded to a tourism entity. ✓

11 SECTION 6. 66.0615 (1m) (d) 2. ^X of the statutes is amended to read:

12 66.0615 (1m) (d) 2. If Subject to par. (dm), ^{if} a municipality collects a room tax
13 on May 13, 1994, it may retain not more than the same percentage of the room tax
14 that it retains on May 13, 1994. If a municipality that collects a room tax on May 1,
15 1994, increases its room tax after May 1, 1994, the municipality may retain not more
16 than the same percentage of the room tax that it retains on May 1, 1994, except that
17 if the municipality is not exempt under par. (am) from the maximum tax that may
18 be imposed under par. (a), the municipality shall spend at least 70% of the increased
19 amount of room tax that it begins collecting after May 1, 1994, on tourism promotion
20 and ^{tourism} development. Any amount of room tax collected that must be spent on tourism
21 promotion and ^{tourism} development shall either be ~~spent directly by the municipality on~~
22 ~~tourism promotion and development or shall be~~ forwarded to the commission for its
23 municipality or zone if the municipality has created a commission, or forwarded to
24 a tourism entity. ✓

25 SECTION 7. 66.0615 (1m) (d) 8. ^X of the statutes is created to read:

INS
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SENATE BILL 438

SECTION 7

1 66.0615 (1m) (d) 8. The governing body of a tourism entity shall include at least
2 one owner or operator of a lodging facility which collects the room tax described in
3 this section and which is located in the municipality for which the room tax is
4 collected. Subdivision 4., as it applies to a commission, applies to a tourism entity.

5 SECTION 8. 66.0615 (1m) (d) 9. of the statutes is created to read:
6 66.0615 (1m) (d) 9. With regard to a tourism entity that spends at least 51
7 percent, but not more than 70 percent, of its revenues on tourism promotion and
8 development, a majority of the members of the tourism entity's governing body shall
9 be owners or operators of restaurants, tourism attractions, or lodging facilities which
10 collect the room tax described in this section, and which are located in the
11 municipality for which the room tax is collected.

12 SECTION 9. 66.0615 (1m) (dm) of the statutes is created to read:

13 66.0615 (1m) (dm) Beginning with the room tax collected on January 1, 2015,
14 by a municipality that collected a room tax on May 13, 1994, as described in par. (d)
15 2., and retained more than 30 percent of the room tax collected for purposes other
16 than tourism promotion and development, such a municipality shall reduce the
17 amount retained that exceeds 30 percent by one-sixth on January 1, 2015, January
18 1, 2016, January 1, 2017, January 1, 2018, January 1, 2019,
19 and January 1, 2020, so that on and after January 1, 2020, the municipality
20 retains not more than 30 percent of the room tax collected for purposes other than
21 tourism promotion and development.

22 SECTION 10. 66.0615 (4) and (5) of the statutes are created to read:

23 66.0615 (4) (a) Annually, on a form created and provided by the department of
24 revenue, every municipality that imposes a tax under sub. (1m) shall certify and
report to the department all of the following:

SENATE BILL 438

, and the room tax rate imposed,

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1. The amount of room tax revenue collected by the municipality in the previous year.

2. A detailed accounting of the amounts of such revenue that were forwarded in the previous year for tourism promotion and development, specifying the commission or tourism entity which received the revenue. The detailed accounting shall include expenditures of at least \$1,000 made by a commission or a tourism entity.

3. A list of each member of the commission and each member of the governing body of a tourism entity to which the municipality forwarded room tax revenue in the previous year, and the name of the business entity the member owns, operates, or is employed by, if any.

(b) The department of revenue shall collect the reports described in par. (a) and shall make them available to the public.

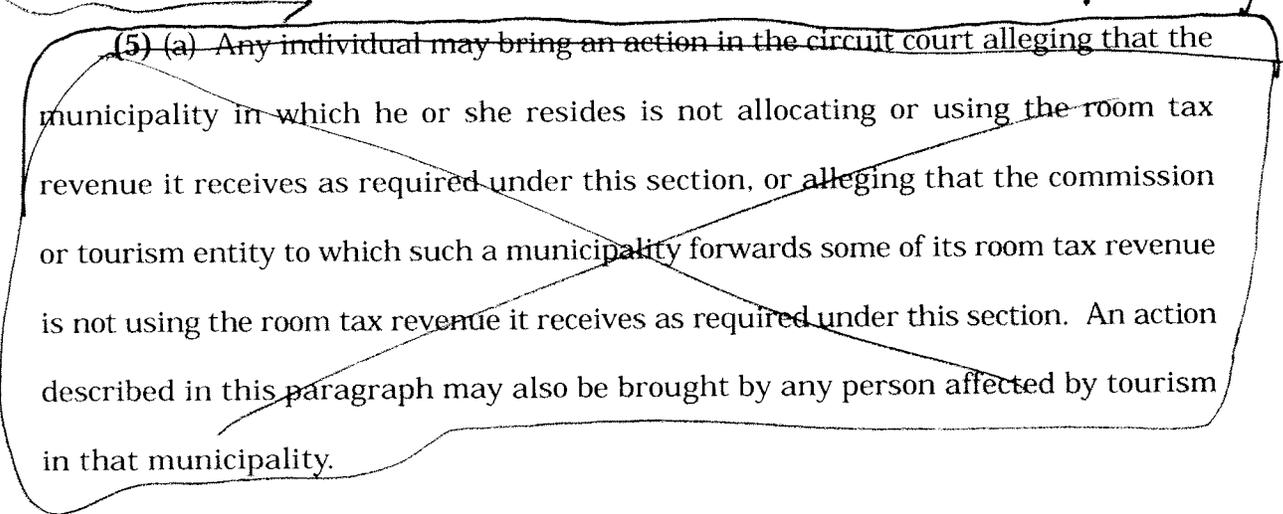
(c) The department of revenue may impose a penalty of not more than \$3,000 on a municipality that does not submit to the department the reports described in par. (a). A municipality may not use room tax revenue to pay a penalty imposed under this paragraph. The penalty shall be paid to the department of revenue.

~~(5) (a) Any individual may bring an action in the circuit court alleging that the municipality in which he or she resides is not allocating or using the room tax revenue it receives as required under this section, or alleging that the commission or tourism entity to which such a municipality forwards some of its room tax revenue is not using the room tax revenue it receives as required under this section. An action described in this paragraph may also be brought by any person affected by tourism in that municipality.~~

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SENATE BILL 438

SECTION 10

1 (b) If the court finds that such room tax revenues are not being allocated by a
2 municipality as required under this section, the court may order the municipality to
3 immediately comply with the statutory requirements in this section relating to the
4 allocation of the room tax revenues, to repay to a tourism entity or commission any
5 amounts that should have been so allocated as required under this section, and may
6 impose a forfeiture on the municipality equal to the lesser of either 20 percent of the
7 amount the municipality must allocate to comply with the court's order or \$1,000.
8 If a forfeiture is imposed under this paragraph, the municipality shall pay the
9 forfeiture to the department of revenue.

10 (c) 1. If the court finds that such room tax revenues are not being used by a
11 commission or tourism entity as required under this section, the court may order the
12 commission or tourism entity to immediately comply with the statutory
13 requirements in this section relating to the use of the room tax revenues.

14 2. If the court finds that a tourism entity is not in compliance with the statutory
15 requirements, as described in subd. 1., the municipality shall create a commission.
16 The municipality shall, for a period of time determined by the court, forward to the
17 commission all room tax revenue that it may not retain. The commission may either
18 spend the revenue it receives directly, or it may forward the revenue to the entity.
19 Upon the expiration of the period of time determined by the court for room tax
20 revenue to be forwarded to the commission, the municipality may resume forwarding
21 the room tax revenue it may not retain directly to the tourism entity.

22 3. If the court finds that a commission is not in compliance with the statutory
23 requirements, as described in subd. 1., the appointing official under sub. (1m) (c) 3.
24 shall dismiss all of the members of the commission and shall appoint new
25 commission members as provided in sub. (1m) (c).

SENATE BILL 438

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(d) If the person who brought the action under par. (a) prevails, the court shall award the plaintiff the costs and reasonable attorney fees the person incurred in bringing the action.

(END)

D-NOTE

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LEGISLATIVE REFERENCE BUREAU

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This bill authorizes a tourism entity or tourism organization to file a written complaint with a municipality alleging that the municipality is not allocating or using room tax revenue as required by the statutes. A municipality that receives such a complaint must reply in writing within 60[✓]days of receipt of the complaint.

If the complainant is unsatisfied by the reply, or if the municipality fails to reply, the complainant may submit to the municipality a written request for mediation. If both parties agree to mediation, they may jointly choose the mediator or agree that one party shall pick the mediator. The cost of the mediator is paid by the party that picks the mediator or, if the parties jointly pick the mediator, the municipality pays if the mediator finds that the municipality is not complying with the room tax statute and the complainant pays if the mediator finds that the municipality is in compliance. If the mediator is unable to determine compliance, the parties split the cost of mediation.✓

The mediator must provide both parties with a written decision on the allegations alleged in the complaint within 60[✓]days of the end of the mediation. If the mediator finds that the municipality is not complying with the room tax statute, he or she shall recommend actions the municipality may take to be in compliance. *
The mediator's decision and findings are not binding on the parties.

If the parties follow the mediator's decision, the complainant may not file suit against the municipality alleging the same issues raised in the complaint. If the municipality does not agree to mediation, or does not follow the mediator's recommendations on how to comply with the room tax statute, the complainant may file a suit against the municipality to enforce compliance with the room tax statute.✓

INS 3-1

SECTION 1. 66.0615 (1) (a) of the statutes is amended to read: ✓

66.0615 (1) (a) "Commission" means an entity created by one municipality or by 2 or more municipalities in a zone, to coordinate tourism promotion and tourism development for the zone. ✓

History: 1983 a. 189, 514; 1993 a. 263, 467, 491; 1999 a. 9; 1999 a. 150 ss. 565 to 567; Stats. 1999 s. 66.0615; 2003 a. 203; 2005 a. 135; 2007 a. 20; 2009 a. 2; 2011 a. 18, 32.

INS 3-7

SECTION 2. 66.0615 (1) (fi) of the statutes is created to read: ✓

66.0615 (1) (fi) "Tourism organization" means a statewide organization that represents any of the following:



1. Tourism entities.
2. The lodging industry.
3. An owner or operator, or a group of owners or operators, of a lodging facility

that collects a room tax.

***NOTE: Does this definition meet your intent? Your predrafted materials were a little confusing.

SECTION 3. 66.0615 (1) (fm) (intro.) of the statutes is amended to read:

66.0615 (1) (fm) (intro.) "Tourism promotion and tourism development" means any of the following that are significantly used by transient tourists and reasonably likely to generate paid overnight stays at more than one establishment on which a tax under sub. (1m) (a) may be imposed, that are owned by different persons and located within a municipality in which a tax under this section is in effect; or, if the municipality has only one such establishment, reasonably likely to generate paid overnight stays in that establishment:

History: 1983 a. 189, 514; 1993 a. 263, 467, 491; 1999 a. 9; 1999 a. 150 ss. 565 to 567; Stats. 1999 s. 66.0615; 2003 a. 203; 2005 a. 135; 2007 a. 20; 2009 a. 2; 2011 a. 18, 32.

INS 5-24

SECTION 4. 66.0615 (1m) (d) 3. of the statutes is amended to read:

66.0615 (1m) (d) 3. A commission shall use the room tax revenue that it receives from a municipality for tourism promotion and tourism development in the zone or in the municipality.

History: 1983 a. 189, 514; 1993 a. 263, 467, 491; 1999 a. 9; 1999 a. 150 ss. 565 to 567; Stats. 1999 s. 66.0615; 2003 a. 203; 2005 a. 135; 2007 a. 20; 2009 a. 2; 2011 a. 18, 32.

~~INS 5-24~~

SECTION 5. 66.0615 (1m) (d) 7. of the statutes is amended to read:

66.0615 (1m) (d) 7. Notwithstanding the provisions of subds. 1. and 2., any amount of room tax revenue that a municipality described under s. 77.994 (3) is required to spend on tourism promotion and tourism development shall be forwarded



to, and spent by, the municipality's tourism entity, unless the municipality creates a commission and forwards the revenue to the commission.

(end ins 5-24)

~~History: 1983 a. 189, 514; 1993 a. 263, 467, 491; 1999 a. 9; 1999 a. 150 ss. 565 to 567; Stats. 1999 s. 66.0615, 2003 a. 202, 2003 a. 435; 2007 a. 20; 2009 a. 2; 2011 a. 18.~~

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(5) (a) A tourism entity or a tourism organization may file a written complaint with municipality alleging that the municipality is not allocating or using the room tax revenue it receives as required under this section. The complaint shall specify the statute with which the municipality is not complying, and how it is not complying. A municipality that receives such a complaint shall provide the complaining party with a written response to the complaint not later than 60 days after the municipality receives the complaint.

***NOTE: Would you like to require some state agency to create a standard complaint form?

(b) If the complainant is not satisfied with the municipality's response, or if the municipality does not respond within the time period specified in par. (a), the complainant may submit to the municipality a written request for mediation.

(c) If both parties agree to mediation, the parties shall either agree on a mediator or the parties may stipulate that one party will choose the mediator. If one party chooses the mediator, that party shall pay all costs associated with the mediation. If the parties jointly choose the mediator, the costs associated with the mediation shall be paid by one of the following:

1. The complainant, if the mediator finds that the municipality is in compliance with this section.
2. The municipality, if the mediator finds that the municipality is not in compliance with this section.
3. Both parties, equally, if the mediator is not able to determine whether the municipality is in compliance with this section.



INS 7-17
CONT

(d) Not later than 60[✓] days after the mediation is concluded, the mediator shall provide both parties with a written decision on the complaint filed by the complainant. If the mediator upholds the allegations in the complaint, his or her written findings shall specify how the municipality is not complying with this[✓] section and shall recommend actions the municipality should take to comply with this section. The mediator's written decision and findings are not binding on the parties.

****NOTE: Your instructions state that the mediator's findings are subject to the open records law. It seems to me that it is not necessary to state this in the statute as a written report in the possession of a municipality, which concerns municipal business, would already be subject to the open records law in subch. II of ch. 19^{AO}

(e) If the parties voluntarily follow the mediator's written decision and findings, the complainant may not commence an action in circuit court ^{e-that} (which) alleges the same issues as the complainant raised in the complaint filed under par. (a).[✓]

^{municipality}
****NOTE: Should this prohibition on commencing an action be time limited? What if the muni follows the mediator's decision for 2 years, and then a tourism entity believes that the muni is not following s. 66.0615,[✓] and would like to file a complaint alleging exactly the same statutory violation that was the motivation for filing the original complaint?

(f) If a municipality does not agree to a request for mediation under par. (b),[✓] or if the mediator's written decision under par. (d)[✓] finds that the municipality is not complying with this section and the municipality refuses to follow the mediator's nonbinding written findings and recommendations,[✓] the complainant may commence an action in circuit court to enforce compliance with the requirements of this section.[✓]

****NOTE: Generally, if any person believes that a unit of government is not following the law the person may file a writ of mandamus asking a court to require the governmental unit to follow the law, so I'm not sure whether par. (f)[✓] is necessary. On the other hand, par. (f) may make it more likely that a court would find that the complainant has standing to file such an action. Would you like any changes to par. (f)?[✓]

(end ins)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

date

PI
LRB-1901/7dn

MES:.....

JW

Senator Olsen: ✓

Please review this preliminary draft very carefully to insure that it meets your intent.

One of your instructions is to change the definition of "tourism entity" ✓ to an organization that came into existence "before January 1, 2013, unless no such organization existed in the area as of that date." ✓ I only changed the definition to include the requirement that the entity had to have come into existence "before January 1, 2013" because the additional phrase seems to completely negate the limitation. The recommended language seems to say that a tourism entity must have existed before January 1, 2013, but if one didn't exist in that area by that date, a municipality may contract with such an entity if it's created. If that's the case, then the limitation is meaningless. Please let me know if I've misconstrued your intent. ✓

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1901/P1dn
MES:jld:rs

May 7, 2013

Senator Olsen:

Please review this preliminary draft very carefully to insure that it meets your intent.

One of your instructions is to change the definition of "tourism entity" to an organization that came into existence "before January 1, 2013, unless no such organization existed in the area as of that date." I only changed the definition to include the requirement that the entity had to have come into existence "before January 1, 2013" because the additional phrase seems to completely negate the limitation. The recommended language seems to say that a tourism entity must have existed before January 1, 2013, but if one didn't exist in that area by that date, a municipality may contract with such an entity if it's created. If that's the case, then the limitation is meaningless. Please let me know if I've misconstrued your intent.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

Shovers, Marc

From: Bruce, Cory
Sent: Friday, May 10, 2013 11:48 AM
To: Shovers, Marc
Cc: Kathi Kilgore (Kilgore@swandby.com); Trisha Pugal (pugal@wisconsinlodging.org); Harriman, Amy
Subject: Room tax - changes

Mark,

We'd like to make one change to the notes Amy forwarded to you the other day. For #4, we'd like to leave the language from the original draft which had the percentage at 3%, but said something to the effect of that will be the percentage unless the municipality has already established a different percentage.

Does that make sense?

If you have any questions, feel free to contact us or Tricia (also copied on this email).

Thanks,
Cory

From: Trisha Pugal [mailto:pugal@wisconsinlodging.org]
Sent: Wednesday, May 08, 2013 7:20 AM
To: Harriman, Amy; Bruce, Cory
Cc: Kathi Kilgore
Subject: Preliminary Draft Comments

Amy and Cory:
After reviewing the draft, we would like to share the following comments for your consideration:

1. Last session's AB 563 on page 6, lines 5 – 11 ("Section 8") is missing. When this is re-inserted, then point #2 on my April 30 Summary should be included as a clarification. This relates to the composition of a tourism entity's leadership.
2. Page 4 line 1 may want to be expanded to Tourism Entities "or Tourism Businesses" to allow other statewide tourism organizations the same rights.
3. Page 5, lines 4 and 5: replace "to cover the person's credit card processing costs" with referencing this is contingent upon timely remittance of room tax payments (per point #6 on the April 30 Summary). The reasoning for the 3% does not seem to be appropriate in statute as other reasoning is not specified. In addition, this is not a direct dollar for dollar retention – many times it will cost more, so this could confuse the issue.
4. Page 5 – drafter's note under line 8: I believe the highest percentage we have seen is 10%, so if you feel it is important to include an amount, that could work. On the other side, we do not want to appear to be looking for 10% - simply allowing municipalities who have already chosen that to be able to continue if they wish.
5. Page 9, Drafter's note under line 5: If you deem appropriate, the Department of Revenue could create such a form.
6. Page 10, Drafter's note under line 2: This merely clarifies the public nature and intent of having transparency, but if you do not wish to include it, we understand.
7. Page 10, Drafter's note under line 5: This should clarify that only the same allocation or expenditure in the same year ruled upon should be exempt from the litigation. Should the municipality repeat the same practice another time, it should not be exempt, so the wording is important.
8. Page 10, Drafter's note under line 10: This is another case of spelling out what can happen as a prevention tool that the law currently does not clarify. It is preferred to stay in, but if you prefer it be omitted, we understand.
9. Finally, to keep everything together, the following was included in a separate e-mail late yesterday, in response to the separate Drafter's Note regarding the definition of "tourism entity" : *The purpose of this wording is to avoid competing organizations (tourism entities) in the area, but if there is none in existence as of this year, one may be*

created to fill this role. Without the full phrase, if an area does not have one now, they never could have a tourism entity.

Please let me know if you have any questions. I am in meetings all day, but will check e-mail every hour or so.

Thank-you for your assistance-

Trisha

Trisha A. Pugal, CAE | President, CEO | **Wisconsin Hotel & Lodging Association** | WisconsinLodging.org | 262.782.2851