

2
PMA

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-NOTE

5000

repeal

X

1 **AN ACT to amend** 66.0615 (1) (a), 66.0615 (1) (f), 66.0615 (1) (fm) (intro.), 66.0615
2 (1m) (a), 66.0615 (1m) (c) 1., 66.0615 (1m) (c) 2. a., 66.0615 (1m) (d) 1., 66.0615
3 (1m) (d) 2., 66.0615 (1m) (d) 3. and 66.0615 (1m) (d) 7.; and **to create** 66.0615
4 (1) (fi), 66.0615 (1m) (d) 8., 66.0615 (1m) (dm) and 66.0615 (4) and (5) of the
5 statutes; **relating to:** changes to the local room tax.

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 tourism 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

and the majority of the members of the governing body of a tourism entity that spends between 51 and 70 percent of its revenue on tourism promotion and development, **(percent)**

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 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. *unless such an entity does not exist in the municipality on the bill's effective date*

Under the bill, the majority of the members of a commission must be owners or operators of restaurants, tourist attractions, or lodging facilities that collect the room tax and that 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, or a higher percentage if authorized by the municipality, to cover the person's credit card and processing fees. 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 six-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, and the room tax rate imposed, 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 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

move

must

✓
during the municipality's
fiscal year in which the
decision is provided to the
parties

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 must 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.

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:

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

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

5 SECTION 2. 66.0615 (1) (f) of the statutes is amended to read:

6 66.0615 (1) (f) "Tourism entity" means a nonprofit organization that came into
7 existence before January 1, 1992, and provides staff, development or promotional
8 2013, spends at least 51 percent of its revenues on tourism promotion and tourism
9 development, and provides destination marketing staff and services for the tourism

10 industry in a municipality. ✓ except that if no such organization exists
in a municipality on the effective date of this
paragraph in [66.0615] inserts date, a municipality

11 SECTION 3. 66.0615 (1) (fi) of the statutes is created to read:

12 66.0615 (1) (fi) "Tourism organization" means a statewide organization that
13 represents any of the following:

↔ may contract with such an organization if one is created
in the municipality ✓

- 1 1. Tourism entities.
- 2 2. The lodging industry.
- 3 3. An owner or operator, or a group of owners or operators, of a lodging facility
- 4 that collects a room tax. *# 4. Tourism businesses.*

*****NOTE: Does this definition meet your intent? Your predrafted materials were a little confusing. Do you want to define "tourism businesses" which you asked to be added here?*

5 SECTION 4. 66.0615 (1) (fm) (intro.) of the statutes is amended to read:

6 66.0615 (1) (fm) (intro.) "Tourism promotion and tourism development" means
 7 any of the following that are significantly used by transient tourists and reasonably
 8 likely to generate paid overnight stays at more than one establishment on which a
 9 tax under sub. (1m) (a) may be imposed, that are owned by different persons and
 10 located within a municipality in which a tax under this section is in effect; or, if the
 11 municipality has only one such establishment, reasonably likely to generate paid
 12 overnight stays in that establishment:

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

14 66.0615 (1m) (a) The governing body of a municipality may enact an ordinance,
 15 and a district, under par. (e), may adopt a resolution, imposing a tax on the privilege
 16 of furnishing, at retail, except sales for resale, rooms or lodging to transients by
 17 hotelkeepers, motel operators and other persons furnishing accommodations that
 18 are available to the public, irrespective of whether membership is required for use
 19 of the accommodations. A tax imposed under this paragraph is not subject to the
 20 selective sales tax imposed by s. 77.52 (2) (a) 1. and may not be imposed on sales to
 21 the federal government and persons listed under s. 77.54 (9a). A tax imposed under
 22 this paragraph by a municipality shall be paid to the municipality and may, with
 23 regard to any tax revenue that may not be retained by the municipality, shall be

→ has a higher percentage in effect on the effective date of this paragraph... [LRB inserts date]

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, or a higher
4 percentage ^{if} ~~is determined by~~ ^{or} the municipality, to cover the person's credit card
5 processing costs. Except as provided in par. (am), a tax imposed under this
6 paragraph by a municipality may not exceed 8%. Except as provided in par. (am),
7 if a tax greater than 8% under this paragraph is in effect on May 13, 1994, the
8 municipality imposing the tax shall reduce the tax to 8%, effective on June 1, 1994.

~~Do you want to impose a maximum withholding amount for credit card processing amounts?~~
~~Does this paragraph meet your intent, your intent about the cap are unclear whether you want one.~~

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

17 **SECTION 7.** 66.0615 (1m) (c) 2. a. of the statutes is amended to read:
18 66.0615 (1m) (c) 2. a. If the commission is created by more than one
19 municipality in a zone, the commission shall consist of 3 members from each
20 municipality in which annual tax collections exceed \$1,000,000, 2 members from
21 each municipality in which annual tax collections exceed \$300,000 but are not more
22 than \$1,000,000 and one member from each municipality in which annual tax
23 collections are \$300,000 or less. A majority of the members of a commission shall be

1 owners or operators of restaurants, tourist attractions, or lodging facilities that
2 collect the room tax described in this section and that are located in the
3 municipalities for which the room tax is collected. Except as provided in subd. 2. b.,
4 members shall be appointed under subd. 3.

5 **SECTION 8.** 66.0615 (1m) (d) 1. of the statutes is amended to read:

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

13 **SECTION 9.** 66.0615 (1m) (d) 2. of the statutes is amended to read:

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

1 commission for its municipality or zone if the municipality has created a commission,
2 or forwarded to a tourism entity.

3 **SECTION 10.** 66.0615 (1m) (d) 3. of the statutes is amended to read:

4 66.0615 (1m) (d) 3. A commission shall use the room tax revenue that it
5 receives from a municipality for tourism promotion and [✓]tourism development in the
6 zone or in the municipality.

7 **SECTION 11.** 66.0615 (1m) (d) 7. of the statutes is amended to read:

8 66.0615 (1m) (d) 7. Notwithstanding the provisions of subds. 1. and 2., any
9 amount of room tax revenue that a municipality described under s. 77.994 (3) is
10 required to spend on tourism promotion and [✓]tourism development shall be forwarded
11 to, and spent by, the municipality's tourism entity, unless the municipality creates
12 a commission and forwards the revenue to the commission.

13 **SECTION 12.** 66.0615 (1m) (d) 8. of the statutes is created to read:

14 66.0615 (1m) (d) 8. The governing body of a tourism entity shall include at least
15 one owner or operator of a lodging facility that collects the room tax described in this
16 section and that is located in the municipality for which the room tax is collected.

17 Subdivision 4., as it applies to a commission, applies to a tourism entity.

18 **SECTION 13.** 66.0615 (1m) (dm) of the statutes is created to read:

19 66.0615 (1m) (dm) Beginning with the room tax collected on January 1, 2015,
20 by a municipality that collected a room tax on May 13, 1994, as described in par. (d)
21 2., and retained more than 30 percent of the room tax collected for purposes other
22 than tourism promotion and [✓]development, such a municipality shall reduce the
23 amount retained that exceeds 30 percent by one-sixth on January 1, 2015, January
24 1, 2016, January 1, 2017, January 1, 2018, January 1, 2019, and January 1, 2020,
25 so that on and after January 1, 2020, the municipality retains not more than 30

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23

1 percent of the room tax collected for purposes other than tourism promotion and ✓
2 development. *tourism*

3 SECTION 14. 66.0615 (4) and (5) of the statutes are created to read:

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

7 1. The amount of room tax revenue collected, and the room tax rate imposed,
8 by the municipality in the previous year.

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

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

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

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

24 (5) (a) A tourism entity or a tourism organization may file a written complaint
25 with municipality alleging that the municipality is not allocating or using the room

be filed on a form prepared by the department of revenue and shall SECTION 14

1 tax revenue it receives as required under this section. The complaint shall specify
2 the statute with which the municipality is not complying, and how it is not
3 complying. A municipality that receives such a complaint shall provide the
4 complaining party with a written response to the complaint not later than 60 days
5 after the municipality receives the complaint.

****NOTE: Does this paragraph meet your intent? The instructions aren't clear whether you want to require some state agency to create a standard complaint form? NOOR

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

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

- 14 1. The complainant, if the mediator finds that the municipality is in compliance
- 15 with this section.
- 16 2. The municipality, if the mediator finds that the municipality is not in
- 17 compliance with this section.
- 18 3. Both parties, equally, if the mediator is not able to determine whether the
- 19 municipality is in compliance with this section.

20 (d) Not later than 60 days after the mediation is concluded, the mediator shall
21 provide both parties with a written decision on the complaint filed by the
22 complainant. If the mediator upholds the allegations in the complaint, his or her
23 written findings shall specify how the municipality is not complying with this section

1 and shall recommend actions the municipality should take to comply with this
2 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.

is provided to the parties

3 (e) If the parties voluntarily follow the mediator's written decision and
4 findings, ^{during the municipality's fiscal year in which the written decision} the complainant may not commence an action in circuit court that alleges
5 the same issues as the complainant raised in the complaint filed under par. (a).

***NOTE: Should this prohibition on commencing an action be time limited? What if the municipality follows the mediator's decision for 2 years, and then a tourism entity believes that the municipality 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?

6 (f) If a municipality does not agree to a request for mediation under par. (b), or
7 if the mediator's written decision under par. (d) finds that the municipality is not
8 complying with this section and the municipality refuses to follow the mediator's
9 nonbinding written findings and recommendations, the complainant may commence
10 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)

I left par. (f) as it appeared in the /P/ version. Is this OK?

D-NOTE

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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 ~~9~~ 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 ^{tourism}
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.

NOTE:
*** A/ES what is point # 2 "
from Trisha's 4/30/13 summary, that
relates to the entity's leadership?
Are changes needed
here? A

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, 2013,
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-third on January 1, 2013, January
18 1, 2014, and January 1, 2015, so that on and after January 1, 2015, the municipality
19 retains not more than 30 percent of the room tax collected for purposes other than
20 tourism promotion and development.

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

22 66.0615 (4) (a) Annually, on a form created and provided by the department of
23 revenue, every municipality that imposes a tax under sub. (1m) shall certify and
24 report to the department all of the following:

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

LRB-1901/P2dn

MES:jld:rs

date

Senator Olsen:

One of the instructions in the ^①email from Trisha Pugal states the following, referring to page 5 of the /P1:

“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.”

I’m not sure what this instruction means in general, or what “referencing this is contingent upon a timely remittance of room tax payments” means in particular. It’s also unclear to me what phrase, exactly, is supposed to replace “to cover the person’s credit card processing costs.” So I just made the change requested by Cory Bruce in s. 66.0615 (1m) (a). Please let me know if any further changes to this paragraph is needed.

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/P2dn
MES:jld:jf

July 9, 2013

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One of the instructions in the e-mail from Trisha Pugal states the following, referring to page 5 of the /P1:

“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.”

I’m not sure what this instruction means in general, or what “referencing this is contingent upon a timely remittance of room tax payments” means in particular. It’s also unclear to me what phrase, exactly, is supposed to replace “to cover the person’s credit card processing costs,” so I just made the change requested by Cory Bruce in s. 66.0615 (1m) (a). Please let me know if any further changes to this paragraph is needed.

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

Shovers, Marc

instructions for /

From: Bruce, Cory
Sent: Monday, July 15, 2013 1:24 PM
To: Shovers, Marc
Cc: Harriman, Amy; Trisha Pugal (pugal@wisconsinlodging.org); Kathi Kilgore (Kilgore@swandby.com)
Subject: Room Tax Draft - Follow up to Drafters notes
Attachments: P2 RTR Responses.docx

Marc,

Attached are the additional changes we'd like to make to the draft. The memo also addresses your drafters notes.

With respect to #3 on the memo, point 2 (lines 11/12) we'd like to include language that the lodging property can only retain the 3% processing costs if they remit their tax revenue on time. This will address an issue in our district where some properties are not turning over the tax they've collected, forcing the municipality to go to court to get the money owed. Our intent is this will work as an incentive to turn it in and to do so on time.

Please let us know if you have any questions. And again, you have permission to talk with Tricia Pugal if you have any questions. I've copied her on this email.

Thanks,
Cory Bruce
Bies Office

Instructions for / /

Proposed Responses to Preliminary Draft #2
Room Tax Reform
LRB-1901/P2

1. Page 3:

Line 11: replace "...the effective date of this paragraph...(LRB inserts date)" with "January 1, 2013"
Reasoning: this matches the January 1, 2013 date mentioned earlier in the paragraph, and eliminates any potential gaps.

2. Page 4:

Note after line 10: We prefer not to define "tourism businesses".
Reasoning: Tourism is broad-based, and what is a tourism business in one area may not be in another area.

3. Page 5: Both of the following address the Drafter's Note of July 9 to Senator Olsen:

Line 11: Remove the words "credit card".

Reasoning: As the percentage listed is an average versus an exact reimbursement of costs AND because the bill allows municipalities to retain a higher percentage if they currently provide this, and thus provide more than just the credit card processing costs, the more general description of "processing costs" addressing intent without requiring an exact match of one type of cost.

Lines 11/12: Include language that the retaining of this 3% can only occur with remittance of the room tax revenue within the time prescribed by the municipality or district.

Reasoning: this means that lodging properties who remit tax revenues late are not eligible to retain the 3% (or more), and this uses language already used in the statute relating to the means of municipalities to enforce the collections of room tax - Section (2) (c).

4. Page 8:

Note after Line 4: add the following "This subdivision does not apply to a tourism entity that receives room tax revenue solely under contract with a commission under par. (b)."

Reasoning: This language was actually included in a drafted amendment to AB 563 (LRBa2537/1) which was never introduced. It provides clarification of an exception that was previously unclear. This addresses the Drafter's Note on this page.

Line 22: insert "tourism" before the word "development".
Reasoning: for consistency in changing all language in this statute to "tourism promotion and tourism development".

5. Page 9:

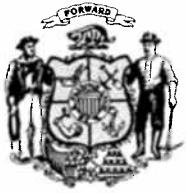
Note after Line 20: Yes, this paragraph addresses having DOR create a uniform reporting form.

6. Page 10:

Note after Line 17: It is reasonable to not specify open records law, which was suggested as not necessary by the Drafter.

7. Page 11:

Note after Line 5: Yes, par. (f) did not need to change from the /P1 version.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1901/E2
MES:jld:jf

pmr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

4

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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 tourism 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

✓ *except that this membership requirement for a tourism entity does not generally apply to an entity that receives room tax revenue solely under contract with a commission.*

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 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. Also, under the bill, a tourism entity must have come into existence before January 1, 2013, unless such an entity does not exist in the municipality on ~~the bill's effective date~~ *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 tourism development, must be owners or operators of restaurants, tourist attractions, or lodging facilities that collect the room tax and that 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, or a higher percentage if authorized by the municipality, to cover the person's ~~credit card and~~ processing fees. 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 six-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, and the room tax rate imposed, 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 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

if the person pays the tax to the municipality as specified by the municipality

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 must 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 during the municipality's fiscal year in which the decision is provided to the parties. 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.

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:

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

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

5 **SECTION 2.** 66.0615 (1) (f) of the statutes is amended to read:

6 66.0615 (1) (f) "Tourism entity" means a nonprofit organization that came into
7 existence before January 1, 1992, and provides staff, development or promotional
8 2013, spends at least 51 percent of its revenues on tourism promotion and tourism
9 development, and provides destination marketing staff and services for the tourism
10 industry in a municipality, except that if no such organization exists in a
11 municipality on ^{January 1, 2013,} ~~the effective date of this paragraph~~ ^{LRB inserts date} a

1 municipality may contract with such an organization if one is created in the
2 municipality.

3 SECTION 3. 66.0615 (1) (fi) of the statutes is created to read:

4 66.0615 (1) (fi) "Tourism organization" means a statewide organization that
5 represents any of the following:

- 6 1. Tourism entities.
- 7 2. The lodging industry.
- 8 3. An owner or operator, or a group of owners or operators, of a lodging facility
- 9 that collects a room tax.
- 10 4. Tourism businesses.

~~here. **NOTE: Do you want to define "tourism businesses," which you asked to be added~~

11 SECTION 4. 66.0615 (1) (fm) (intro.) of the statutes is amended to read:

12 66.0615 (1) (fm) (intro.) "Tourism promotion and tourism development" means
13 any of the following that are significantly used by transient tourists and reasonably
14 likely to generate paid overnight stays at more than one establishment on which a
15 tax under sub. (1m) (a) may be imposed, that are owned by different persons and
16 located within a municipality in which a tax under this section is in effect; or, if the
17 municipality has only one such establishment, reasonably likely to generate paid
18 overnight stays in that establishment:

19 SECTION 5. 66.0615 (1m) (a) of the statutes [✓] is amended to read:

20 66.0615 (1m) (a) The governing body of a municipality may enact an ordinance,
21 and a district, under par. (e), may adopt a resolution, imposing a tax on the privilege
22 of furnishing, at retail, except sales for resale, rooms or lodging to transients by
23 hotelkeepers, motel operators and other persons furnishing accommodations that

as affected by 2013 Wisconsin Act 20,

within the time frame specified by
the municipality ✓

plain

consumer or user, but

1 are available to the public, irrespective of whether membership is required for use
 2 of the accommodations. A tax imposed under this paragraph [✓] (as not subject to the
 3 selective sales tax imposed by s. 77.52 (2) (a) 1. and ^{may be collected from the} may not be imposed on sales to
 4 the federal government and persons listed under s. 77.54 (9a). A tax imposed under
 5 this paragraph by a municipality shall be paid to the municipality ^{within a time frame specified by the} and may, with
 6 regard to any tax revenue that may not be retained by the municipality, ^{municipality} shall be
 7 forwarded to a tourism entity or a commission if one is created under par. (c), as
 8 provided in par. (d), except that before the person collecting the tax pays it to the
 9 municipality, the person may retain 3 percent of the tax collected, or a higher
 10 percentage if the municipality has a higher percentage in effect on the effective date
 11 of this paragraph ... [LRB inserts date], to cover the person's ^{or} credit card processing
 12 costs. Except as provided in par. (am), a tax imposed under this paragraph by a
 13 municipality may not exceed 8%. Except as provided in par. (am), if a tax greater
 14 than 8% under this paragraph is in effect on May 13, 1994, the municipality
 15 imposing the tax shall reduce the tax to 8%, effective on June 1, 1994.

SECTION 6. 66.0615 (1m) (c) 1. of the statutes is amended to read:

17 66.0615 (1m) (c) 1. If a commission is created by a single municipality, the
 18 commission shall consist of 4 to 6 members. One At least one of the commission
 19 members shall represent the Wisconsin hotel and motel industry. Members shall be
 20 appointed under subd. 3. A majority of the members of a commission shall be owners
 21 or operators of restaurants, tourist attractions, or lodging facilities that collect the
 22 room tax described in this section, and that are located in the municipality for which
 23 the room tax is collected.

SECTION 7. 66.0615 (1m) (c) 2. a. of the statutes is amended to read:

24

1 66.0615 (1m) (c) 2. a. If the commission is created by more than one
2 municipality in a zone, the commission shall consist of 3 members from each
3 municipality in which annual tax collections exceed \$1,000,000, 2 members from
4 each municipality in which annual tax collections exceed \$300,000 but are not more
5 than \$1,000,000 and one member from each municipality in which annual tax
6 collections are \$300,000 or less. A majority of the members of a commission shall be
7 owners or operators of restaurants, tourist attractions, or lodging facilities that
8 collect the room tax described in this section and that are located in the
9 municipalities for which the room tax is collected. Except as provided in subd. 2. b.,
10 members shall be appointed under subd. 3.

11 **SECTION 8.** 66.0615 (1m) (d) 1. of the statutes is amended to read:

12 66.0615 (1m) (d) 1. A municipality that first imposes a room tax under par. (a)
13 after May 13, 1994, shall spend at least 70% of the amount collected on tourism
14 promotion and tourism development. Any amount of room tax collected that must
15 be spent on tourism promotion and tourism development shall either be spent
16 ~~directly by the municipality on tourism promotion and development or shall be~~
17 forwarded to the commission for its municipality or zone if the municipality has
18 created a commission, or forwarded to a tourism entity.

19 **SECTION 9.** 66.0615 (1m) (d) 2. of the statutes is amended to read:

20 66.0615 (1m) (d) 2. If Subject to par. (dm), if a municipality collects a room tax
21 on May 13, 1994, it may retain not more than the same percentage of the room tax
22 that it retains on May 13, 1994. If a municipality that collects a room tax on May 1,
23 1994, increases its room tax after May 1, 1994, the municipality may retain not more
24 than the same percentage of the room tax that it retains on May 1, 1994, except that
25 if the municipality is not exempt under par. (am) from the maximum tax that may

1 be imposed under par. (a), the municipality shall spend at least 70% of the increased
2 amount of room tax that it begins collecting after May 1, 1994, on tourism promotion
3 and tourism development. Any amount of room tax collected that must be spent on
4 tourism promotion and tourism development shall either be spent directly by the
5 ~~municipality on tourism promotion and development or shall be~~ forwarded to the
6 commission for its municipality or zone if the municipality has created a commission,
7 or forwarded to a tourism entity.

8 **SECTION 10.** 66.0615 (1m) (d) 3. of the statutes is amended to read:

9 66.0615 (1m) (d) 3. A commission shall use the room tax revenue that it
10 receives from a municipality for tourism promotion and tourism development in the
11 zone or in the municipality.

12 **SECTION 11.** 66.0615 (1m) (d) 7. of the statutes is amended to read:

13 66.0615 (1m) (d) 7. Notwithstanding the provisions of subds. 1. and 2., any
14 amount of room tax revenue that a municipality described under s. 77.994 (3) is
15 required to spend on tourism promotion and tourism development shall be forwarded
16 to, and spent by, the municipality's tourism entity, unless the municipality creates
17 a commission and forwards the revenue to the commission.

18 **SECTION 12.** 66.0615 (1m) (d) 8. of the statutes is created to read:

19 66.0615 (1m) (d) 8. The governing body of a tourism entity shall include at least
20 one owner or operator of a lodging facility that collects the room tax described in this
21 section and that is located in the municipality for which the room tax is collected.
22 Subdivision 4., as it applies to a commission, applies to a tourism entity.

23 **SECTION 13.** 66.0615 (1m) (d) 9. of the statutes is created to read:

24 66.0615 (1m) (d) 9. With regard to a tourism entity that spends at least 51
25 percent, but not more than 70 percent, of its revenues on tourism promotion and

1 tourism development, a majority of the members of the tourism entity's governing
2 body shall be owners or operators of restaurants, tourism attractions, or lodging
3 facilities which collect the room tax described in this section, and which are located

4 in the municipality for which the room tax is collected. *This subdivision does not apply to a tourism entity that receives room tax revenue solely under contract with a commission under par. (b).*
NOTE: What is "point #2" from Trisha's 4/30/13 summary, that relates to the entity's leadership? Are changes needed here?

5 SECTION 14. 66.0615 (1m) (dm) of the statutes is created to read:

6 66.0615 (1m) (dm) Beginning with the room tax collected on January 1, 2015,
7 by a municipality that collected a room tax on May 13, 1994, as described in par. (d)
8 2., and retained more than 30 percent of the room tax collected for purposes other
9 than tourism promotion and tourism development, such a municipality shall reduce
10 the amount retained that exceeds 30 percent by one-sixth on January 1, 2015,
11 January 1, 2016, January 1, 2017, January 1, 2018, January 1, 2019, and January
12 1, 2020, so that on and after January 1, 2020, the municipality retains not more than
13 30 percent of the room tax collected for purposes other than tourism promotion and
14 tourism development.

15 SECTION 15. 66.0615 (4) and (5) of the statutes are created to read:

16 66.0615 (4) (a) Annually, on a form created and provided by the department of
17 revenue, every municipality that imposes a tax under sub. (1m) shall certify and
18 report to the department all of the following:

19 1. The amount of room tax revenue collected, and the room tax rate imposed,
20 by the municipality in the previous year.

21 2. A detailed accounting of the amounts of such revenue that were forwarded
22 in the previous year for tourism promotion and *tourism* development, specifying the
23 commission or tourism entity that received the revenue. The detailed accounting

1 shall include expenditures of at least \$1,000 made by a commission or a tourism
2 entity.

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

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

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

13 (5) (a) A tourism entity or a tourism organization may file a written complaint
14 with municipality alleging that the municipality is not allocating or using the room
15 tax revenue it receives as required under this section. The complaint shall be filed
16 on a form prepared by the department of revenue and shall specify the statute with
17 which the municipality is not complying, and how it is not complying. A municipality
18 that receives such a complaint shall provide the complaining party with a written
19 response to the complaint not later than 60 days after the municipality receives the
20 complaint.

***NOTE: Does this paragraph meet your intent? The instructions aren't clear
whether you want DOB to create a standard complaint form.

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

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

6 1. The complainant, if the mediator finds that the municipality is in compliance
 7 with this section.

8 2. The municipality, if the mediator finds that the municipality is not in
 9 compliance with this section.

10 3. Both parties, equally, if the mediator is not able to determine whether the
 11 municipality is in compliance with this section.

12 (d) Not later than 60 days after the mediation is concluded, the mediator shall
 13 provide both parties with a written decision on the complaint filed by the
 14 complainant. If the mediator upholds the allegations in the complaint, his or her
 15 written findings shall specify how the municipality is not complying with this section
 16 and shall recommend actions the municipality should take to comply with this
 17 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.~~

18 (e) If the parties voluntarily follow the mediator's written decision and findings
 19 the complainant may not commence an action in circuit court, during the
 20 municipality's fiscal year in which the written decision is provided to the parties, that
 21 alleges the same issues as the complainant raised in the complaint filed under par.

22 (a).

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

***NOTE: Left par. (f) as it appeared in the /P1 version. Is this OK?

6

(END)

Shovers, Marc

From: Bruce, Cory
Sent: Tuesday, July 30, 2013 2:11 PM
To: Shovers, Marc
Cc: Harriman, Amy
Subject: Room Tax Bill

Marc,

Thank you for putting together the latest draft of the room tax bill. I think we're almost there! After talking to Tricia, she noticed one change and asked me to touch base with you. On page 5, lines 5-6, and lines 9-10 the draft says "within a time frame specified by the municipality". She said the current statute says something like "within time frame prescribed by municipality". She's obviously way better versed in the language of this law than I am because I would never have noticed the change. But we're wondering if there was a reason for wording it the way you have it in the draft as opposed to what the current statute says? If not, I think we'd prefer the language in current statute. There is concern that municipalities could change the time throughout the year and they'd want to avoid that. The way it's in statutes currently, they feel is more definitive.

Thanks,
Cory Bruce
Bies Office

Shovers, Marc

From: Bruce, Cory
Sent: Wednesday, July 31, 2013 11:39 AM
To: Shovers, Marc
Cc: Harriman, Amy
Subject: RE: Room Tax Bill

Marc,
Go ahead and use "prescribed" and don't worry about including regularly. I agree, I doubt that municipalities would go through that hassle. I think with that last change we'll be all set.

Thanks,
Cory

From: Shovers, Marc
Sent: Wednesday, July 31, 2013 11:33 AM
To: Bruce, Cory
Cc: Harriman, Amy
Subject: RE: Room Tax Bill

Hello Cory and Amy:

If it's OK with you, I'd recommend using "prescribed" and leaving it at that. I gather from Trisha's earlier emails that she wanted "prescribed" instead of "specified" because "prescribed" is what is in current law and it apparently has worked fine and has not lead to "creative last minute changes."

I really don't think "regularly" adds much. It just does not seem plausible to me that municipalities are in the habit of constantly changing the dates when a business has to submit tax revenue in order to "catch someone off guard." If municipalities suddenly start to do this, one option would be to prohibit a municipality from changing such a date more than once per year, or something like that but, again, I really can't imagine that municipalities would go through the administrative hassle of frequently changing these dates.

Thanks for your help.

Marc

From: Bruce, Cory
Sent: Wednesday, July 31, 2013 9:18 AM
To: Shovers, Marc
Cc: Harriman, Amy
Subject: FW: Room Tax Bill

Marc,
Below is Trisha's thoughts on the wording. I'll defer to you on the use of the word "regularly" and whether it's necessary given her additional comments.

Thanks,
Cory Bruce
Bies Office

From: Trisha Pugal [mailto:pugal@wisconsinlodging.org]
Sent: Tuesday, July 30, 2013 3:31 PM
To: Bruce, Cory
Cc: Harriman, Amy
Subject: Re: Room Tax Bill

Cory & Amy:

We would appreciate a change to use "prescribed", and if you and the drafter feel it would be reasonable to use the word "regularly" or something to that effect right before "prescribed", it would allow the municipality to set the deadlines, but would also avoid any creative last minute change that would catch the property submitting the tax revenue off guard with a technicality.

Thank-you,

Trisha

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

From: "Bruce, Cory" <Cory.Bruce@legis.wisconsin.gov>
Date: Tuesday, July 30, 2013 3:14 PM
To: Trisha Pugal <pugal@wisconsinlodging.org>
Cc: "Harriman, Amy" <Amy.Harriman@legis.wisconsin.gov>
Subject: FW: Room Tax Bill

Trisha,

Please see below and advise.

Thanks,

Cory

From: Shovers, Marc
Sent: Tuesday, July 30, 2013 3:02 PM
To: Bruce, Cory
Cc: Harriman, Amy
Subject: RE: Room Tax Bill

Hi Cory:

I'd be happy to make that change. I think she's referring to s. 66.0615 (2) (c):

66.0615(2)(c)

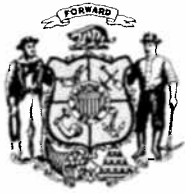
(c) Determine the tax under sub. (1m) according to its best judgment if a person required to make a return fails, neglects or refuses to do so for the amount, in the manner and form **and within the time prescribed by the municipality or district.**

There's no particular reason why the bill says "specified" in those 2 places. Could you check with Tricia to see if she'd also like me change "specified" to "prescribed" on page 9, line 22?

I understand her concern and there's good reason for the statutes to use the same word. But as far as I can tell, if a municipality wanted to change the time throughout the year, all it would have to do is "prescribe" a new time, so I don't think that "prescribed" provides more certainty than "specified." Again, I'm more than happy to make this change, but I don't want anyone to think that "prescribed" has any different legal effect than "specified" in this instance.

Marc

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



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1901/12

MES:jld:ph

FMR

2013 BILL

X

regen

1 AN ACT *to amend* 66.0615 (1) (a), 66.0615 (1) (f), 66.0615 (1) (fm) (intro.), 66.0615
 2 (1m) (a), 66.0615 (1m) (c) 1., 66.0615 (1m) (c) 2. a., 66.0615 (1m) (d) 1., 66.0615
 3 (1m) (d) 2., 66.0615 (1m) (d) 3. and 66.0615 (1m) (d) 7.; and *to create* 66.0615
 4 (1) (fi), 66.0615 (1m) (d) 8., 66.0615 (1m) (d) 9., 66.0615 (1m) (dm) and 66.0615
 5 (4) and (5) of the statutes; **relating to:** changes to the local room tax.

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 tourism 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

BILL

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 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. Also, under the bill, a tourism entity must have come into existence before January 1, 2013, unless such an entity does not exist in the municipality on 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 tourism development, must be owners or operators of restaurants, tourist attractions, or lodging facilities that collect the room tax and that are located in the municipality for which the room tax is collected, except that this membership requirement for a tourism entity does not generally apply to an entity that receives room tax revenue solely under contract with a commission. 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, or a higher percentage if authorized by the municipality, to cover the person's processing fees if the person pays the tax to the municipality as ^{prescribed} ~~specified~~ by the municipality. 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 six-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, and the room tax rate imposed, 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 a tourism entity or tourism organization to file a written complaint with a municipality alleging that the municipality is not allocating or

BILL

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 must 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 during the municipality's fiscal year in which the decision is provided to the parties. 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.

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:

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

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

5 **SECTION 2.** 66.0615 (1) (f) of the statutes is amended to read:

6 66.0615 (1) (f) "Tourism entity" means a nonprofit organization that came into
7 existence before January 1, 1992, and ~~provides staff, development or promotional~~
8 2013, spends at least 51 percent of its revenues on tourism promotion and tourism
9 development, and provides destination marketing staff and services for the tourism

BILL

1 industry in a municipality, except that if no such organization exists in a
2 municipality on January 1, 2013, a municipality may contract with such an
3 organization if one is created in the municipality.

4 **SECTION 3.** 66.0615 (1) (fi) of the statutes is created to read:

5 66.0615 (1) (fi) "Tourism organization" means a statewide organization that
6 represents any of the following:

7 1. Tourism entities.

8 2. The lodging industry.

9 3. An owner or operator, or a group of owners or operators, of a lodging facility
10 that collects a room tax.

11 4. Tourism businesses.

12 **SECTION 4.** 66.0615 (1) (fm) (intro.) of the statutes is amended to read:

13 66.0615 (1) (fm) (intro.) "Tourism promotion and tourism development" means
14 any of the following that are significantly used by transient tourists and reasonably
15 likely to generate paid overnight stays at more than one establishment on which a
16 tax under sub. (1m) (a) may be imposed, that are owned by different persons and
17 located within a municipality in which a tax under this section is in effect; or, if the
18 municipality has only one such establishment, reasonably likely to generate paid
19 overnight stays in that establishment:

20 **SECTION 5.** 66.0615 (1m) (a) ^x of the statutes, as affected by 2013 Wisconsin Act
21 20, is amended to read:

22 66.0615 (1m) (a) The governing body of a municipality may enact an ordinance,
23 and a district, under par. (e), may adopt a resolution, imposing a tax on the privilege
24 of furnishing, at retail, except sales for resale, rooms or lodging to transients by
25 hotelkeepers, motel operators and other persons furnishing accommodations that

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1 are available to the public, irrespective of whether membership is required for use
2 of the accommodations. A tax imposed under this paragraph may be collected from
3 the consumer or user, but may not be imposed on sales to the federal government and
4 persons listed under s. 77.54 (9a). A tax imposed under this paragraph by a
5 municipality shall be paid to the municipality within a time frame ~~specified~~ ^{prescribed} by the
6 municipality and may, with regard to any tax revenue that may not be retained by
7 the municipality, shall be forwarded to a tourism entity or a commission if one is
8 created under par. (c), as provided in par. (d), except that before the person collecting
9 the tax pays it to the municipality within the ~~specified~~ ^{prescribed} time frame by the
10 municipality, the person may retain 3 percent of the tax collected, or a higher
11 percentage if the municipality has a higher percentage in effect on the effective date
12 of this paragraph [LRB inserts date], to cover the person's processing costs.
13 Except as provided in par. (am), a tax imposed under this paragraph by a
14 municipality may not exceed 8%. Except as provided in par. (am), if a tax greater
15 than 8% under this paragraph is in effect on May 13, 1994, the municipality
16 imposing the tax shall reduce the tax to 8%, effective on June 1, 1994.

17 **SECTION 6.** 66.0615 (1m) (c) 1. of the statutes is amended to read:

18 66.0615 (1m) (c) 1. If a commission is created by a single municipality, the
19 commission shall consist of 4 to 6 members. ~~One~~ At least one of the commission
20 members shall represent the Wisconsin hotel and motel industry. Members shall be
21 appointed under subd. 3. A majority of the members of a commission shall be owners
22 or operators of restaurants, tourist attractions, or lodging facilities that collect the
23 room tax described in this section, and that are located in the municipality for which
24 the room tax is collected.

25 **SECTION 7.** 66.0615 (1m) (c) 2. a. of the statutes is amended to read:

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1 66.0615 (1m) (c) 2. a. If the commission is created by more than one
2 municipality in a zone, the commission shall consist of 3 members from each
3 municipality in which annual tax collections exceed \$1,000,000, 2 members from
4 each municipality in which annual tax collections exceed \$300,000 but are not more
5 than \$1,000,000 and one member from each municipality in which annual tax
6 collections are \$300,000 or less. A majority of the members of a commission shall be
7 owners or operators of restaurants, tourist attractions, or lodging facilities that
8 collect the room tax described in this section and that are located in the
9 municipalities for which the room tax is collected. Except as provided in subd. 2. b.,
10 members shall be appointed under subd. 3.

11 **SECTION 8.** 66.0615 (1m) (d) 1. of the statutes is amended to read:

12 66.0615 (1m) (d) 1. A municipality that first imposes a room tax under par. (a)
13 after May 13, 1994, shall spend at least 70% of the amount collected on tourism
14 promotion and tourism development. Any amount of room tax collected that must
15 be spent on tourism promotion and tourism development shall either be spent
16 ~~directly by the municipality on tourism promotion and development or shall be~~
17 forwarded to the commission for its municipality or zone if the municipality has
18 created a commission, or forwarded to a tourism entity.

19 **SECTION 9.** 66.0615 (1m) (d) 2. of the statutes is amended to read:

20 66.0615 (1m) (d) 2. If Subject to par. (dm), if a municipality collects a room tax
21 on May 13, 1994, it may retain not more than the same percentage of the room tax
22 that it retains on May 13, 1994. If a municipality that collects a room tax on May 1,
23 1994, increases its room tax after May 1, 1994, the municipality may retain not more
24 than the same percentage of the room tax that it retains on May 1, 1994, except that
25 if the municipality is not exempt under par. (am) from the maximum tax that may

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1 be imposed under par. (a), the municipality shall spend at least 70% of the increased
2 amount of room tax that it begins collecting after May 1, 1994, on tourism promotion
3 and tourism development. Any amount of room tax collected that must be spent on
4 tourism promotion and tourism development shall either be ~~spent directly by the~~
5 ~~municipality on tourism promotion and development or shall be~~ forwarded to the
6 commission for its municipality or zone if the municipality has created a commission,
7 or forwarded to a tourism entity.

8 **SECTION 10.** 66.0615 (1m) (d) 3. of the statutes is amended to read:

9 66.0615 (1m) (d) 3. A commission shall use the room tax revenue that it
10 receives from a municipality for tourism promotion and tourism development in the
11 zone or in the municipality.

12 **SECTION 11.** 66.0615 (1m) (d) 7. of the statutes is amended to read:

13 66.0615 (1m) (d) 7. Notwithstanding the provisions of subds. 1. and 2., any
14 amount of room tax revenue that a municipality described under s. 77.994 (3) is
15 required to spend on tourism promotion and tourism development shall be forwarded
16 to, and spent by, the municipality's tourism entity, unless the municipality creates
17 a commission and forwards the revenue to the commission.

18 **SECTION 12.** 66.0615 (1m) (d) 8. of the statutes is created to read:

19 66.0615 (1m) (d) 8. The governing body of a tourism entity shall include at least
20 one owner or operator of a lodging facility that collects the room tax described in this
21 section and that is located in the municipality for which the room tax is collected.
22 Subdivision 4., as it applies to a commission, applies to a tourism entity.

23 **SECTION 13.** 66.0615 (1m) (d) 9. of the statutes is created to read:

24 66.0615 (1m) (d) 9. With regard to a tourism entity that spends at least 51
25 percent, but not more than 70 percent, of its revenues on tourism promotion and

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1 tourism development, a majority of the members of the tourism entity's governing
2 body shall be owners or operators of restaurants, tourism attractions, or lodging
3 facilities which collect the room tax described in this section, and which are located
4 in the municipality for which the room tax is collected. This subdivision does not
5 apply to a tourism entity that receives room tax revenue solely under contract with
6 a commission under par. (b).

7 **SECTION 14.** 66.0615 (1m) (dm) of the statutes is created to read:

8 66.0615 (1m) (dm) Beginning with the room tax collected on January 1, 2015,
9 by a municipality that collected a room tax on May 13, 1994, as described in par. (d)
10 2., and retained more than 30 percent of the room tax collected for purposes other
11 than tourism promotion and tourism development, such a municipality shall reduce
12 the amount retained that exceeds 30 percent by one-sixth on January 1, 2015,
13 January 1, 2016, January 1, 2017, January 1, 2018, January 1, 2019, and January
14 1, 2020, so that on and after January 1, 2020, the municipality retains not more than
15 30 percent of the room tax collected for purposes other than tourism promotion and
16 tourism development.

17 **SECTION 15.** 66.0615 (4) and (5) of the statutes are created to read:

18 66.0615 (4) (a) Annually, on a form created and provided by the department of
19 revenue, every municipality that imposes a tax under sub. (1m) shall certify and
20 report to the department all of the following:

21 1. The amount of room tax revenue collected, and the room tax rate imposed,
22 by the municipality in the previous year.

23 2. A detailed accounting of the amounts of such revenue that were forwarded
24 in the previous year for tourism promotion and tourism development, specifying the
25 commission or tourism entity that received the revenue. The detailed accounting

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1 shall include expenditures of at least \$1,000 made by a commission or a tourism
2 entity.

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

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

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

13 (5) (a) A tourism entity or a tourism organization may file a written complaint
14 with municipality alleging that the municipality is not allocating or using the room
15 tax revenue it receives as required under this section. The complaint shall be filed
16 on a form prepared by the department of revenue and shall specify the statute with
17 which the municipality is not complying, and how it is not complying. A municipality
18 that receives such a complaint shall provide the complaining party with a written
19 response to the complaint not later than 60 days after the municipality receives the
20 complaint.

21 (b) If the complainant is not satisfied with the municipality's response, or if the
22 municipality does not respond within the time period ^{✓ prescribed} ~~specified~~ in par. (a), the
23 complainant may submit to the municipality a written request for mediation.

24 (c) If both parties agree to mediation, the parties shall either agree on a
25 mediator or the parties may stipulate that one party will choose the mediator. If one

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1 party chooses the mediator, that party shall pay all costs associated with the
2 mediation. If the parties jointly choose the mediator, the costs associated with the
3 mediation shall be paid by one of the following:

4 1. The complainant, if the mediator finds that the municipality is in compliance
5 with this section.

6 2. The municipality, if the mediator finds that the municipality is not in
7 compliance with this section.

8 3. Both parties, equally, if the mediator is not able to determine whether the
9 municipality is in compliance with this section.

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

16 (e) If the parties voluntarily follow the mediator's written decision and findings
17 the complainant may not commence an action in circuit court, during the
18 municipality's fiscal year in which the written decision is provided to the parties, that
19 alleges the same issues as the complainant raised in the complaint filed under par.

20 (a).

21 (f) If a municipality does not agree to a request for mediation under par. (b), or
22 if the mediator's written decision under par. (d) finds that the municipality is not
23 complying with this section and the municipality refuses to follow the mediator's

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1 nonbinding written findings and recommendations, the complainant may commence
2 an action in circuit court to enforce compliance with the requirements of this section.

3 (END)

Rose, Stefanie

From: Harriman, Amy
Sent: Monday, August 19, 2013 3:59 PM
To: LRB.Legal
Subject: Draft Review: LRB -1901/2 Topic: Modifications to the local room tax

Please Jacket LRB -1901/2 for the SENATE.