Legislative Fiscal Bureau

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: 2005 Assembly Bill 298: Tourism Room Tax Reporting

2005 Assembly Bill 298 would require municipalities and commissions that first collected room taxes after May 13, 1994, to verify that they annually expend at least 70% of their room tax revenues on tourism promotion and development in an annual report to be submitted to the Department of Tourism. If Tourism did not believe a municipality or commission was expending the required amount of revenues upon reviewing the report, Tourism would be required to forward the report to the Department of Revenue (DOR) for additional review. If DOR were to concur with Tourism, it would assess a forfeiture and a surcharge, the latter of which would be deposited to Tourism for joint effort marketing grant awards. The bill was introduced on April 7, 2005, and was referred to the Assembly Committee on Tourism. On September 6, 2005, the Committee adopted Assembly Amendment 1 to Assembly Amendment 1 by a vote of 12 to 0. The Committee then adopted Assembly Amendment 1, as amended, by a vote of 7 to 5. On the same day, AB 298, as amended, was adopted and recommended for passage on a vote of 7 to 5 by the Committee. On September 26, 2005, the bill was referred to the Joint Committee on Finance.

CURRENT LAW

Under current law, a municipality or local exposition district may impose a room tax on the privilege of furnishing retail rooms or lodging to guests by operators of hotels, motels, and other similar accommodations. The general maximum room tax that may be charged is 8%. A municipality may create a commission to coordinate the use of room tax collections for the promotion and development of tourism, and multiple municipalities in a single destination zone may combine to establish a single commission.

A commission is required 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 as a nonprofit organization that existed before January 1, 1992, and provides staff, development, or promotional services for the tourism industry in a municipality. Annually, a commission is required to report to each municipality from which it receives room tax revenue the purposes for which the revenues were spent.

A municipality that first imposes a room tax after May 13, 1994, must spend at least 70% of the amount collected on tourism promotion and development, whether spent directly by the municipality or forwarded to a commission for the municipality or zone.

SUMMARY OF BILL

AB 298 would require a commission to use room tax revenue from a municipality for tourism promotion and development, including the support of a convention center, unless the convention center is owned privately and only generates overnight stays at one establishment. Under the bill, tourism promotion and development would be defined as a marketing project, transient tourist informational service, or tangible municipal development that is significantly used by transient tourists and would generate paid overnight stays at more than one establishment (unless the municipality only has one such establishment), owned by different people, on which room taxes may be imposed, within a municipality that has established a room tax.

AB 298 would require a municipality to annually file a form with the Department of Tourism that would detail the municipality's (or corresponding tourism commission's) expenditures for tourism promotion and development. If the Department of Tourism determines, after review, that at least 70 percent of room tax revenues were not expended for the purpose of tourism promotion and development, Tourism would be required to forward the information on which it based this determination to the Department of Revenue.

Upon receipt of this information and an itemized review of the municipality's or commission's expenditures, were DOR to affirm Tourism's determination, Revenue would be required to impose a forfeiture of $10 and a surcharge on the municipality. The surcharge would be up to 7% of the amount of expenditures made from room tax revenues that were not made for required tourism promotion and development in the specified year, but not less than $500. To the greatest extent possible, any surcharge paid by a municipality would be paid from its room tax revenues not expended on tourism promotion and development. Under the bill, these revenues would be deposited to Tourism's tourism marketing general program operations GPR appropriation and would be used to make grants under the joint effort marketing (JEM) program. The JEM grant program offers grants for the promotion of tourist events and attractions in the state to public agencies and private non-profit organizations, including any tribal government or not-for-profit tribal entity, for grants that fund up to 50% of the cost of a project related to the development of publicity and the production and placement of advertising.

SUMMARY OF AMENDMENTS

Assembly Amendment 1 (AA 1) to AB 298 would redefine tourism promotion and development to mean any of the following that is significantly used by transient tourists and that generates paid overnight stays at more than one establishment on which a room tax may be imposed (unless the municipality only has one such establishment): (a) marketing projects (including advertising buys, creation and distribution of printed or electronic promotional tourist materials, or efforts to recruit conventions, sporting events, or motorcoach groups); (b) transient tourist information services; and (c) tangible municipal development. The provision would remain in the bill that would prohibit the use of room tax revenues that are expended on a privately-owned convention center that only generates overnight stays at one establishment from being considered to be tourism promotion and development.

In addition, AA 1 would require the submission of an annual report from both municipalities and commissions to the Department of Tourism, indicating the tourism promotion and development purposes for which any room tax revenues were expended. Tourism would then use these reports to determine whether the municipality or commission had expended the required 70% of room tax revenues on tourism promotion and development purposes.

Further, Assembly Amendment 1 would grant the Department of Revenue the authority to promulgate administrative rules establishing surcharges for a municipality's or a commission's failure to meet the bill's requirements (rather than specifying a surcharge of up to 7%, but not less than $500). The Department of Revenue would be required to submit these proposed administrative rules to the Legislative Council staff by the first day of the tenth month after the effective date of the bill.

Moreover, AA 1 makes a technical correction by specifying that any surcharges imposed by the Department of Revenue would be deposited to a room tax surcharge appropriation in the Department of Tourism. Tourism would be required to use revenues from this program revenue appropriation for joint effort marketing (JEM) grants.

Assembly Amendment 1 to AA 1 would change the definition of tourism promotion and development from specified items that "generate" paid overnight stays to specified items that are "extremely likely to generate" paid overnight stays in a municipality or zone.

FISCAL EFFECT

<u>Department of Tourism.</u> The Department of Tourism anticipates minimal one-time costs for the creation of the form that local governments would use to report their use of room tax revenues and to create a surcharge schedule. Tourism officials estimate the receipt of approximately 200 reports annually. However, they argue that unless additional resources are provided, most examinations of the submitted reports would be in response to complaints or in instances were the

Department has reason to believe the municipality or commission is not expending the required amount. The bill would provide no additional administrative resources to Tourism. As a result, Tourism officials project ongoing costs of less than $10,000 related to 0.1 FTE for the annual review of the reports submitted by municipalities and commissions that collect room taxes. If a more proactive approach were taken by the Department in the review of these reports, Tourism officials estimate costs of $30,000 and 0.5 position. The amount of surcharge revenues that might be received for joint effort marketing grants is not determinable.

<u>Department of Revenue.</u> Department officials expect ongoing costs related to the annual review of any reports forwarded to the Department by Tourism. However, as a result of the uncertainty surrounding the number of reports annually forwarded to DOR due to Tourism believing the municipality or commission expended insufficient revenues on allowable tourism promotion and development, it is difficult to calculate a reliable estimate. The bill would make no appropriation to DOR.

<u>Common School Fund.</u> Under the bill, if the Department of Revenue determines that a municipality did not expend the required amount of funding on tourism promotion and development purposes, Revenue would be required to impose a $10 forfeiture on that municipality. Article X, Section 2, of the Wisconsin Constitution, requires that the clear proceeds from fines and forfeitures collected by counties be deposited to the state's common school fund, for the support and maintenance of Wisconsin public schools and the "purchase of suitable libraries." Since it is uncertain how many forfeitures will be assessed, the annual amount of revenue that will be deposited to the common school fund is unknown.

<u>Local Governments.</u> The effect that this bill would have on local governments is not certain. Under current law, commissions are required to develop an annual report indicating the uses of room taxes, but municipalities are not. Municipalities' costs of developing such an annual report are uncertain. If local governments have relied on room tax revenues for purposes other than tourism promotion and development that would be specified in the bill, they would no longer be able to use more than 30% of room tax revenues for those purposes. Further, if local governments fail to expend the required amount of funding on tourism promotion and development, they could be required to pay a $10 forfeiture and a surcharge to the state.

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