



State of Wisconsin
2011 - 2012 LEGISLATURE



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2011 SENATE BILL 438

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.

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

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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.

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, 2013.

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

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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.

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) (f) of the statutes is amended to read:

2 66.0615 (1) (f) “Tourism entity” means a nonprofit organization that came into
3 existence before January 1, 1992, and provides staff, development or promotional
4 spends at least 51 percent of its revenues on tourism promotion and development,
5 and provides destination marketing staff and services for the tourism industry in a
6 municipality.

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

8 66.0615 (1m) (a) The governing body of a municipality may enact an ordinance,
9 and a district, under par. (e), may adopt a resolution, imposing a tax on the privilege
10 of furnishing, at retail, except sales for resale, rooms or lodging to transients by
11 hotelkeepers, motel operators and other persons furnishing accommodations that
12 are available to the public, irrespective of whether membership is required for use
13 of the accommodations. A tax imposed under this paragraph is not subject to the
14 selective sales tax imposed by s. 77.52 (2) (a) 1. and may not be imposed on sales to
15 the federal government and persons listed under s. 77.54 (9a). A tax imposed under
16 this paragraph by a municipality shall be paid to the municipality and may, with
17 regard to any tax revenue that may not be retained by the municipality, shall be

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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 imposing the tax shall reduce the tax
7 to 8%, effective on June 1, 1994.

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 which collect the
14 room tax described in this section, 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 which
24 collect the room tax described in this section, and which are located in the

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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. 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 development. Any amount of room tax collected that must be spent
7 on tourism promotion and 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. 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 development. Any amount of room tax collected that must be spent on tourism
21 promotion and 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. of the statutes is created to read:

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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 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, 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:

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

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

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

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

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

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

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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).

