WEST VIRGINIA LEGISLATURE
Regular Session 2005

ENROLLED

SENATE BILL NO. 237

(By Senator McCAE, ET AL.)

PASSED April 9, 2005

In Effect July 1, 2005
ENROLLED

Senate Bill No. 237
(By Senators McCabe, Bailey, Edgell, McKenzie, Kessler and Foster)

[Passed April 9, 2005; to take effect July 1, 2005.]

AN ACT to amend and reenact §7-18-2, §7-18-9, and §7-18-14 of the Code of West Virginia, 1931, as amended, all relating to the hotel occupancy tax generally; allowing municipalities to increase the rate of tax imposed to six percent; exempting certain hotels from the imposition of the tax; authorizing imposition of certain tax by counties on certain hotels located in municipality; requiring public hearings on proposed increases; providing additional legislative findings as to purposes for which public financial support should be provided; and providing a misdemeanor criminal penalty for members of governing bodies who vote for or cause expenditures of tax revenues for purposes not specified in said article.

Be it enacted by the Legislature of West Virginia:

That §7-18-2, §7-18-9 and §7-18-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 18. HOTEL OCCUPANCY TAX.
§7-18-2. Rate of tax.

1 The rate of tax imposed shall be three percent of the consideration paid for the use or occupancy of a hotel room: Provided, That on and after the first day of July, two thousand five, a municipality may by ordinance increase the rate of tax imposed in this section to not more than six percent of the consideration paid for the use or occupancy of a hotel room: Provided, however, That notwithstanding any other provision of this article to the contrary, a municipality may not impose any tax authorized by this article on a hotel located within its corporate limits upon which a county was imposing a tax authorized by this article on or after the first day of January, two thousand five, and continuously thereafter to and including the effective date of annexation of the territory in which the hotel is located pursuant to article six, chapter eight of this code and as to that hotel, the county is authorized to continue to impose and collect the tax authorized by this article at the rate of three percent of the consideration paid for the use or occupancy of a hotel room: Provided further, That in the event the county commission duly enters an order of record that ceases to impose the tax authorized by this article on that hotel, then, as to that hotel, the municipality in which the hotel is located by reason of the annexation may impose the tax authorized by this article. Prior to the second reading of an ordinance proposed by a municipality to increase the rate of tax, the municipality shall conduct a properly noticed public hearing on the issue. The consideration paid for the use or occupancy of a hotel room shall not include the amount of tax imposed on the transaction under article fifteen, chapter eleven of this code or charges for meals, valet service, room service, telephone service or other charges or consideration not paid for use or occupancy of a hotel room.

§7-18-9. Total amount collected to be remitted.

1 A profit may not accrue to any person as a result of the collection of the tax authorized under this article. Not-
withstanding that the total amount of taxes collected by a
hotel operator may be in excess of the amount for which a
consumer would be liable by the application of the levy
imposed under this article for the occupancy of a hotel
room or rooms, the total amount of all taxes collected by
any hotel operator shall be remitted to the taxing author-
ity as hereinafter provided.

§ 7-18-14. Proceeds of tax; application of proceeds.

(a) Application of proceeds. – The net proceeds of the tax
collected and remitted to the taxing authority pursuant to
this article shall be deposited into the general revenue
fund of such municipality or county commission and, after
appropriation thereof, shall be expended only as provided
in subsections (b) and (c) of this section.

(b) Required expenditures. – At least fifty percent of the
net revenue receivable during the fiscal year by a county
or a municipality pursuant to this article shall be ex-
pended in the following manner for the promotion of
conventions and tourism:

(1) Municipalities. – If a convention and visitor’s bureau
is located within the municipality, county or region, the
governing body of such municipality shall appropriate the
percentage required by this subsection to that bureau. If
a convention and visitor’s bureau is not located within
such municipality, county or region, then the percentage
appropriation required by this subsection shall be appro-
priated as follows:

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

(ii) If there is more than one convention and visitor's bureau located within a municipality, county or region, the city council may allocate the tax authorized by this article to one or more of such bureaus in such portion as the city council in its sole discretion determines.

(iii) The balance of net revenue required to be expended by this subsection shall be appropriated to the regional travel council serving the area in which the municipality is located.

(2) *Counties.* If a convention and visitor's bureau is located within a county or region, the county commission shall appropriate the percentage required by this subsection to that convention and visitor's bureau. If a convention and visitor's bureau is not located within such county or region, then the percentage appropriation required by this subsection shall be appropriated as follows:

(i) Any hotel located within such county or region may apply to such county for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such county, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to this subsection: *Provided*, That prior to appropriating any moneys to such hotel such county shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.
(ii) If there is more than one convention and visitor’s bureau located within a county or region, the county commission may allocate the tax authorized by this article to one or more of such bureaus in such portion as the county commission in its sole discretion determines.

(iii) The balance of net revenue required to be expended by this subsection shall be appropriated to the regional travel council serving the area in which the county is located.

(3) Legislative finding. – The Legislature hereby finds and declares that in order to attract new business and industry to this state and to retain existing business and industry all to provide the citizens of the state with economic security, and to advance the business prosperity and economic welfare of this state, it is necessary to enhance recreational and tourism opportunities. Therefore, in order to promote recreation and tourism, the Legislature finds that public financial support should be provided for constructing, equipping, improving and maintaining projects, agencies and facilities which promote recreation and tourism. The Legislature also finds that the support of convention and visitor’s bureaus, hotels and regional travel councils is a public purpose for which funds may be expended. Local convention and visitor’s bureaus, hotels and regional travel councils receiving funds under this subsection may expend such funds for the payment of administrative expenses, and for the direct or indirect promotion of conventions and tourism, and for any other uses and purposes authorized by subdivisions (1) and (2) of this subsection.

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

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

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

(3) The promotion of conventions;

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

(5) The promotion of the arts;

(6) Historic sites;

(7) Beautification projects; or

(8) Medical care, in an amount not exceeding one hundred thousand dollars, in any county where: (i) There is an urgent necessity to preserve the delivery of acute medical care services; (ii) there is an increase in need for acute medical care services directly related to tourism; (iii) recurrent flooding in the county significantly disrupts, on a periodic basis, the delivery of acute medical care services; (iv) there is an inadequate economic base within the county from any source other than tourism to preserve the delivery of acute medical care services; (v) there is an inadequate economic base directly related to low population in the county, specifically, a population of less than ten thousand persons according to the census of the year one thousand nine hundred ninety; and (vi) there is one and only one hospital within the county; and the county commission makes specific findings, by resolution, that all of the foregoing conditions within the county exist.
(d) Definitions. — For purposes of this section, the following terms are defined:

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

(2) Convention center. — “Convention center” means a convention facility owned by the state, a county, a municipality or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities and publicly owned facilities constructed or used for the accommodation and entertainment of tourists and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.

(3) Fiscal year. — “Fiscal year” means the year beginning the first day of July and ending the thirtieth day of June of the next calendar year.

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

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

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

pality.

Region. – “Region” means an area consisting of one or more counties that have agreed by contract to fund a convention and visitor’s bureau to promote those counties.

(8) Regional travel council. – “Regional travel council” means a nonstock, nonprofit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the region of this state served by the regional travel council.

Historic site. – “Historic site” means any site listed on the United States national register of historic places, or listed by a local historical landmarks commission, estab-
lished under state law, when such sites are owned by a city, a county or a nonprofit historical association and are open, from time to time, to accommodate visitors.

(e) Any member of a governing body who willingly and knowingly votes to or causes to be expended moneys generated by the provisions of this section for purposes other than specifically set forth in this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ............ this the ............ Day of April ............ , 2005.

Governor
PRESENTED TO THE
GOVERNOR

APR 27 2005

Time 2:00 p.m.