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**HOUSE BILL 2552**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representative Condotta

AN ACT Relating to tourism marketing; reenacting and amending RCW 43.79A.040; adding a new section to chapter 82.04 RCW; adding a new chapter to Title 43 RCW; and adding a new chapter to Title 82 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  FINDINGS—PURPOSE. (1) The legislature finds that the tourism industry is the fourth largest economic sector in the state of Washington. Since 2011 there have been no general funds committed to statewide tourism marketing and Washington is the only state without a state tourism office. Before 2011, the amount of funds appropriated to statewide tourism marketing were not significant and in fact, Washington ranked forty-eighth in state tourism funding. Washington has significant attractions and activities for tourists, including many natural outdoor assets that draw visitors to mountains, waterways, parks, and open spaces. There should be a program to publicize these assets and activities that is implemented in an expeditious manner by tourism professionals in the private sector.

(2) The purpose of this act is to establish the framework and funding for a statewide tourism marketing program. The program needs to have a structure that includes significant, stable, long-term funding, and it should be implemented and managed by the tourism industry. The source of funds should be from major sectors of the tourism industry with government assistance in collecting these funds and providing accountability for their expenditure. The business and occupation tax credit authorized for contributions made in this chapter will bring direct benefits to those making contributions by bringing more tourists into the state who will patronize the participating businesses.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assessed sectors" means a person in any of the following industry sectors:

(a) Lodging; and

(b) Food service, attractions and entertainment, retail, and transportation.

(2) "Attractions and entertainment" means businesses whose primary business activity in this state is:

(a) Producing live presentations involving the performance of actors, actresses, singers, dancers, musical groups, or other performing artists;

(b) Operating a professional or semiprofessional team or club primarily engaged in participating in live sporting events before a paying audience;

(c) Operating any kind of racetrack or the presenting or promoting of racing events held at a racetrack;

(d) Organizing, promoting, or managing performing arts productions; sporting events; and similar events, such as fairs, concerts, and festivals;

(e) Representing or managing creative and performing artists, athletes, entertainers, or other public figures;

(f) The preservation and exhibition of objects of historical, cultural, or educational value;

(g) The preservation and exhibition of sites, buildings, forts, or communities that describe events or persons of particular historical interest;

(h) The preservation and exhibition of live plant or animal life displays;

(i) The preservation and exhibition of natural areas or settings;

(j) Operating an amusement park, theme park, water park, or similar facility;

(k) Operating an amusement arcade or parlor, including a billiards parlor;

(l) Operating a golf course open to the public;

(m) Operating a driving range or miniature golf facility;

(n) Operating a downhill or cross-country skiing area, including operating equipment such as ski lifts and tows;

(o) Acting as a travel agent or tour operator taxable under RCW 82.04.260(5);

(p) Engaging in the business of operating contests of chance taxable under RCW 82.04.285; or

(q) Operating a "marina," which means providing docking or storage facilities primarily or exclusively for pleasure craft owners, with or without any related activities, such as retailing fuel and marine supplies, and repairing, maintaining, or renting pleasure craft.

(3) "Authority" means the Washington tourism marketing authority created in section 3 of this act.

(4) "Business" means a person as defined in RCW 82.04.030, required to file tax returns with the department for purposes of reporting taxes due under chapter 82.04, 82.08, or 82.16 RCW.

(5) "Contribution" means cash contributions.

(6) "Director" means the director of the department of revenue.

(7) "Food service" means businesses whose primary business activity in this state is operating a "restaurant" as defined in RCW 82.08.9995.

(8) "Lodging" means a person that furnishes lodging taxable by the state under chapter 82.08 RCW at a facility that contains twenty or more lodging units.

(9) "Person" has the same meaning as provided in RCW 82.04.030.

(10) "Primary" means:

(a) The business activity that generated more than fifty percent of a business's total adjusted gross revenue during the preceding calendar year or, if the person did not engage in business during the preceding calendar year, during the current calendar year; or

(b) The business activity that generated the most adjusted gross revenue during the preceding calendar year or, if the person did not engage in business during the preceding calendar year, during the current calendar year, if the business engaged in more than two business activities during the relevant time period and none of the activities generated more than fifty percent of the business's total adjusted gross revenue.

(11)(a) "Retail" means businesses whose primary business activity in this state is making retail sales from the operation of one or more of the following:

(i) An establishment that primarily sells one or more of the following categories of goods: Alcohol products intended for off-premises consumption; any type of clothing, including shoes and accessories; jewelry; luggage or leather goods; sporting goods, including athletic uniform supply stores, fishing supply stores, bicycle shops, golf equipment stores, saddlery stores, diving equipment stores, general sporting goods stores, fitness equipment stores, outdoor recreation stores, and gun shops; books; fresh cut flowers, potted ornamental plants, floral arrangements, floral bouquets, wreaths, or similar products; novelty merchandise; souvenirs; greeting cards; seasonal and holiday decorations; curios; toys; games; and hobby and craft supplies except needlecraft;

(ii) An establishment that has separate departments for various merchandise lines, including department stores and discount department stores;

(iii) An establishment selling a general line of groceries in combination with general lines of merchandise, including warehouse clubs and supercenters; or

(iv) An establishment selling a general line of merchandise, such as apparel, automotive parts, dry goods, hardware, groceries, housewares, or home furnishings, and other lines of merchandise in limited amounts, with none of the lines of merchandise predominating, such as dollar stores, general stores, and variety stores.

(b) "Retail" does not include:

(i) Businesses primarily engaged in making retail sales via the internet;

(ii) Businesses in the food service sector pursuant to subsection (8) of this section; or

(iii) Establishments primarily making retail sales in any one of the following categories: Electronics; appliances; health and personal care products, such as prescription and nonprescription drugs and medicines, first-aid products, toiletries, beauty supplies, perfume, personal grooming products, dietary supplements as defined in RCW 82.08.0293; durable medical equipment, prosthetic devices, or mobility enhancing equipment as those terms are defined in RCW 82.08.0283; groceries; gasoline, or gasoline and very limited lines of groceries and other merchandise; specialty food items, including bakeries, meat markets, and fish and seafood markets; hardware, building materials, lawn and garden supplies, or any combination thereof; motor vehicles or watercraft; automotive parts and accessories, including tires; furniture; nursery and garden products; outdoor power equipment; home furnishings; or used merchandise.

(12) "Secretary" means the secretary of state.

(13) "Statewide tourism marketing account" means the account created pursuant to section 5 of this act in the custody of the state treasurer. This account must be the depository for contributions collected pursuant to section 6 of this act and any legislative appropriation, except as otherwise provided in section 5 of this act.

(14) "Transportation" means businesses whose primary business activity in this state is:

(a) Transporting paying passengers for hire by motor vehicle or vessel, but not including:

(i) Transportation that crosses the state's boundaries or the territorial waters of the state; or

(ii) Businesses whose primary business activity in this state is providing transportation for "persons with special transportation needs" as defined in RCW 81.66.010;

(b) Providing day trips for sightseeing purposes. Such transportation includes sightseeing buses and trolleys, steam train excursions, horse-drawn carriage rides, airboat rides, dinner cruises, harbor sightseeing tours, aerial sightseeing flights, hot air balloon rides, aerial tramways, and similar transportation activities;

(c) Making retail car rentals as defined in RCW 82.08.011; or

(d) Providing automobile parking or storage garage services defined as a retail sale in RCW 82.04.050.

NEW SECTION. **Sec.**  WASHINGTON TOURISM MARKETING AUTHORITY—ESTABLISHED. (1) The Washington tourism marketing authority is established as a public body corporate and politic, constituting an instrumentality of the state of Washington.

(2) The authority is responsible for acting as a business management organization on behalf of the citizens of the state to manage financial resources and contract for statewide tourism marketing services.

(3) Membership in the authority includes any person that makes a contribution to the statewide tourism marketing account authorized in section 6 of the act.

(4) The office of the secretary of state must provide administrative assistance to the authority.

NEW SECTION. **Sec.**  BOARD OF DIRECTORS. (1)(a) The authority must be governed by a board of directors. The board of directors must be composed of thirteen members.

(b) Board membership must be allocated to the assessed sectors as follows:

(i) Lodging, four members;

(ii) Food service, three members;

(iii) Retail, two members;

(iv) Attractions and entertainment, one member; and

(v) Transportation, one member.

(c) In addition, there must be two members representing regional destination marketing organizations.

(d) The secretary and the director must serve as ex officio voting members of the authority.

(2) The secretary and the director must jointly make appointments to the board from nominations submitted by organizations representing assessed sectors and members of the authority. Appointments must reflect diversity in geography, size of businesses, gender, and ethnicity.

(3)(a) Half of the initial appointments under subsection (1)(b)(i), (ii), and (iii) of this section must be for two years. The initial appointment under subsection (1)(b)(iv) of this section must be for four years. The initial appointment under subsection (1)(b)(v) of this section must be for two years.

(b) After the initial appointments, all appointments must be for four years.

(4) The board must select from its membership the chair of the board and such other officers as it deems appropriate.

(5) A majority of the board constitutes a quorum.

(6) The board must create its own bylaws in accordance with the laws of the state of Washington.

(7) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty after notice and a public hearing, unless the notice and hearing are expressly waived in writing by the affected member.

(8) If a vacancy occurs on the board, the secretary and the director must appoint a replacement from the same sector and from recommendations provided by businesses in that sector. The appointed member must serve the remainder of the term.

(9) The members of the board serve without compensation but are entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties.

(10) The board must meet at least quarterly.

(11) No board member of the authority may serve on the board of an organization that could be considered for the contract authorized by section 6 of this act.

NEW SECTION. **Sec.**  STATEWIDE TOURISM MARKETING ACCOUNT. (1) The statewide tourism marketing account is created in the custody of the state treasurer. All receipts from contributions under section 6 of this act and legislative appropriations must be deposited into the account, except as provided in subsection (2) of this section. Expenditures from the account may be used only for expenses related to implementation of a statewide tourism marketing program. The chair of the authority or the chair's designee may authorize expenditures from the account. In the event of a dispute concerning expenditure authorization, a majority of the board may authorize expenditures for the account. The account is not subject to appropriation or allotment procedures for expenditures.

(2) One percent of the total revenue from contributions to the statewide tourism marketing account must be deposited into the general fund to reimburse the state for administration of the business and occupation tax credit program created in section 9 of this act, incurred by the department.

NEW SECTION. **Sec.**  USE OF FUNDS. (1) The authority must use any funds legally available to it for any purpose specifically authorized by this chapter, including:

(a) Entering into a contract for a multiple-year statewide tourism marketing plan with a statewide nonprofit organization existing on the effective date of this section whose sole purpose is marketing Washington to tourists and who meets the requirements of subsection (2) of this section;

(b) Contracting for the evaluation of the impact of the statewide tourism marketing program; and

(c) Paying for administrative expenses of the authority, which may not exceed one and one-half percent of funds collected in any fiscal year.

(2) In entering into a contract for a statewide marketing program, the authority must require the statewide nonprofit organization to be governed by a board reflecting sectors of the tourism industry and having geographically diverse representation. Sectors of the tourism industry must include adventure/recreation, arts and culture, attractions, lodging, food service, retail, and transportation. Other sectors may also include representatives of other organizations that have contributed to funding for the statewide tourism marketing program or that have particular expertise in tourism marketing, including but not limited to port districts, tribes, destination marketing organizations, economic development organizations, airlines, cruise ships, and other tourism related businesses. Geographic diversity will be based on regions established by the nonprofit organization. If, after appropriate notice, the authority determines that there is only one qualified entity, then the authority may issue a sole source contract. The authority must include a provision in such a contract that will enable the contractor to pay expenses in a timely manner.

(3) All funds collected by the authority under this chapter, including interest, dividends, and other profits, are and must remain under the complete control of the authority and its board of directors, be fully available to achieve the intent of this chapter, and be used for the sole purpose of achieving the intent of this chapter.

(4)(a) The authority may discontinue the acceptance of contributions if the authority, by a majority vote, determines that the program as implemented pursuant to subsection (1)(a) of this section is not effective.

(b) If the authority votes to discontinue the acceptance of contributions, the authority must notify the department within thirty days after the vote.

**Sec.**  RCW 43.79A.040 and 2013 c 251 s 5 and 2013 c 88 s 1 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the Washington advanced college tuition payment program account, the accessible communities account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family leave insurance account, the food animal veterinarian conditional scholarship account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the multiagency permitting team account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the statewide tourism marketing account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state heritage center account, the reduced cigarette ignition propensity account, the center for childhood deafness and hearing loss account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, and the radiation perpetual maintenance fund.

(c) The following accounts and funds must receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. **Sec.**  AUTHORIZATION AND COLLECTION OF CONTRIBUTIONS. (1) Applications for tax credits under this chapter must be made to the department before making a contribution to the statewide tourism marketing account. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the proposed amount of contribution to the statewide tourism marketing account, and other information required by the department to determine eligibility. The department must rule on the application within forty-five days. Applications must be approved on a first-come basis.

(2) To make a contribution the person's primary business activity must be in an assessed sector and the person must make the contribution described in the approved application by the end of the calendar year in which the application is approved to claim a credit allowed under section 7 of this act.

(3) If the department receives notice from the authority that contributions to the account are discontinued, the department may not approve any applications for tax credits immediately following the day notice was received.

(4) "Assessed sector" has the same meaning as provided in section 2 of this act and "primary business activity" means at least fifty percent of gross income generated is from a business activity in an assessed sector.

(5) The department may not accept any applications before January 1, 2017.

NEW SECTION. **Sec.**  CREDIT AUTHORIZED - LIMITATIONS. (1) Subject to the limitations in this chapter, a credit is allowed against the tax imposed by chapter 82.04 RCW for approved contributions that are made by a person to the statewide tourism marketing account.

(2) The credit allowed under this section is limited to an amount equal to fifty percent of the approved contribution made by a person to the statewide tourism marketing account.

(3) The department must keep a running total of all credits approved under this chapter for each calendar year. The department may not approve any credits under this section that would cause the total amount of approved credits statewide to exceed five million dollars in any calendar year.

(4) The total credits allowed under this section for any person may not exceed five thousand dollars in a calendar year.

(5) The credit may be claimed against any tax due under chapter 82.04 RCW only in the calendar year immediately following the calendar year in which the credit was approved by the department and the contribution was made to the statewide tourism marketing account. Credits may not be carried over to subsequent years. No refunds may be granted for credits under this chapter.

(6) The total credit claimed in any calendar year by a person may not exceed the lesser amount of approved credit, or fifty percent of the amount of the contribution that is made by the person to the statewide tourism marketing account, in the prior calendar year.

(7) The tax credit authorized under this section is exempt from the requirements of RCW 82.32.805 and 82.32.808.

NEW SECTION. **Sec.**  FILING REQUIREMENTS. (1) To claim a credit under this chapter, a person must electronically file with the department all returns, forms, and other information the department requires in an electronic format as provided or approved by the department. Any return, form or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

(2) Chapter 82.32 RCW applies to the administration of this chapter.

NEW SECTION. **Sec.**  The department may adopt rules to implement this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 82.04 RCW to read as follows:

This chapter does not apply to amounts received by a nonprofit organization from the Washington tourism marketing authority pursuant to a contract authorized under section 6(1)(a) of this act.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preference contained in section 12 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) It is the legislature's specific public policy objective to support the state's tourism industry in implementing and managing the statewide tourism marketing program authorized by this act. Therefore, to maximize the effectiveness of contributions authorized by this act in achieving the goals of this act, the legislature intends to provide a permanent business and occupation tax exemption for the contributions collected under section 8 of this act and paid over by the Washington tourism marketing authority to a nonprofit entity chosen to implement and manage the statewide tourism marketing program authorized under this act. Because the legislature intends for the exemption in section 12 of this act to be permanent, it is exempt from the ten-year expiration provision in RCW 82.32.805(1)(a).

NEW SECTION. **Sec.**  SHORT TITLE. This chapter may be known and cited as the statewide tourism marketing act.

NEW SECTION. **Sec.**  Sections 1 through 6 and 14 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec.**  Sections 8 through 11 of this act constitute a new chapter in Title 82 RCW.

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