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**SUBSTITUTE SENATE BILL 5916**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Trade & Economic Development (originally sponsored by Senators Brown, Chase, Angel, Kohl-Welles, Hatfield, Benton, and McAuliffe)

AN ACT Relating to tourism marketing; reenacting and amending RCW 43.79A.040; adding a new chapter to Title 43 RCW; adding a new chapter to Title 82 RCW; providing an effective date; and declaring an emergency.

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.

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

(1) "Adjusted gross revenue" means the total gross income of the business as defined in RCW 82.04.080 less any validly claimed deductions or exempt amounts under chapter 82.04 RCW.

(2) "Assessed sectors" means businesses in any of the following industry sectors:

(a) Lodging; and

(b) The following sectors based on NAICS codes: Food service, attractions and entertainment, retail, and transportation.

(3) "Attractions and entertainment" means businesses whose primary business activity, on the effective date of this section, is within any of the following NAICS codes or their successor codes: 561510, 561520, 7111, 711211, 711212, 711219, 7113, 711410, 711510, 712110, 712120, 712130, 712190, 713110, 713120, 713290, 713910 (publicly owned only), 713930, and 713990.

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

(5) "Common control" means any group of companies owned by the same five or fewer people, owning at least eighty percent of the companies. For the purpose of determining annual adjusted gross revenues, companies under common control may choose to be treated as a single company. This definition is derived from the United States employee retirement income security act of 1974 and should be interpreted consistent with the regulations prescribed by the United States secretary of the treasury.

(6) "Department" means the department of revenue.

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

(8) "Food service" means businesses whose primary business activity, on the effective date of this section, is within any of the following NAICS codes or their successor codes: 722110, 722212, 722213, and 722410.

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

(10) "NAICS codes" means the North American Industrial Classification System codes used by federal statistical agencies and the state in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the business economy.

(11) "Retail" means businesses whose primary business activity, on the effective date of this section, is within any of the following NAICS codes or their successor codes: 445310, 4481, 448210, 448310, 448320, 451110, 451120, 451211, 452111, 452112, 452910, 452990, 453110, and 453220.

(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 shall be the depository for fees collected pursuant to section 6 of this act and charges collected pursuant to section 10 of this act.

(14) "Transportation" means businesses whose primary business activity, on the effective date of this section, is within any of the following NAICS codes or their successor codes: 483212, 485310, 485320, 485510, 48599, 487, 532111, and 812930.

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) The authority must establish procedures to:

(a) Notify businesses within the assessed sectors included in section 2(2)(b) of this act of the fee imposed in section 6 of this act; and

(b) Maintain a database of businesses subject to the fee under section 6 of this act that can be accessed by the authority.

(4) Membership in the authority includes all businesses subject to section 6 of this act or the charge imposed in section 10 of this act.

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

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

(b) Board membership shall 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 shall be two members representing regional destination marketing organizations.

(d) The secretary and the director shall 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 shall 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 shall be for two years. The initial appointment under subsection (1)(b)(iv) of this section shall be for four years. The initial appointment under subsection (1)(b)(v) of this section shall be for two years.

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

(4) The board shall 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 shall 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 shall appoint a replacement from the same sector and from recommendations provided by businesses in that sector. The appointed member shall 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) No board member of the authority may serve on the board of an organization that could be considered for the contract authorized by section 7 of this act.

(11) The board shall meet at least quarterly.

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 fees under section 6 of this act and the charge on lodging businesses imposed in section 10 of this act shall be deposited into the account. Expenditures from the account may be used only for expenses related to implementation of a statewide tourism marketing program, including continuing administrative expenses of the department of revenue and the secretary associated with administration of section 6 of this act and chapter 82.-- RCW (the new chapter created in section 16 of this act). 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) Expenses of the department of revenue and the secretary to administer section 6 of this act and chapter 82.-- RCW (the new chapter created in section 16 of this act) must be reimbursed from the statewide tourism marketing account. The board, secretary, and director may agree to a reimbursement schedule.

NEW SECTION. **Sec.**  AUTHORIZATION AND COLLECTION OF FEES. (1) Fees shall be imposed on all businesses in those assessed sectors included in section 2(2)(b) of this act and that are required to annually renew a license or registration with the secretary.

(2) All revenue from fees imposed under this section shall be deposited in the statewide tourism marketing account.

(3) Food service fees shall be assessed using the definition of common control.

(4) Beginning on the effective date of this section, the fees imposed in subsection (1) of this section shall be collected annually from each business subject to the fee. The fee is due on the due date of the business's annual license or registration renewal with the secretary. The amount of the fee is based on the business's annual adjusted gross revenue from the previous calendar year. If a business did not operate during the entire previous calendar year and the business is the result of a mere change in identity or form of ownership of a business that did operate during the previous calendar year, the fee under this section is based on the combined annual adjusted gross revenues of both businesses from the previous calendar year. The rate of the fee imposed in this section is as provided in this subsection (4).

(a) Food service.

|  |  |  |
| --- | --- | --- |
| Less than $500,000 | $ | 25 |
| $500,000 – $999,999 | $ | 175 |
| $1,000,000 – $1,499,999 | $ | 350 |
| $1,500,000 – $1,999,999 | $ | 525 |
| $2,000,000 – $2,499,999 | $ | 700 |
| $2,500,000 – $2,999,999 | $ | 875 |
| $3,000,000 – $3,499,999 | $ | 1,050 |
| $3,500,000 – $3,999,999 | $ | 1,225 |
| $4,000,000 – $4,499,999 | $ | 1,400 |
| $4,500,000 – $4,999,999 | $ | 1,575 |
| $5,000,000 – $5,499,999 | $ | 1,750 |
| $5,500,000 – $5,999,999 | $ | 1,925 |
| $6,000,000 – $6,499,999 | $ | 2,100 |
| $6,500,000 – $6,999,999 | $ | 2,275 |
| $7,000,000 – $7,499,999 | $ | 2,450 |
| $7,500,000 – $7,999,999 | $ | 2,625 |
| $8,000,000 – $8,499,999 | $ | 2,800 |
| $8,500,000 – $8,999,999 | $ | 2,975 |
| $9,000,000 – $9,499,999 | $ | 3,150 |
| $9,500,000 – $9,999,999 | $ | 3,325 |
| Over $10,000,000 | $ | 3,500 |

(b) Attractions and entertainment.

|  |  |  |
| --- | --- | --- |
| $200,000 – $599,999 | $ | 100 |
| $600,000 – $999,999 | $ | 250 |
| $1,000,000 – $1,999,999 | $ | 400 |
| $2,000,000 – $4,999,999 | $ | 1,000 |
| Greater than $5 million | $ | 2,500 |

(c) Retail.

|  |  |  |
| --- | --- | --- |
| $200,000 – $599,999 | $ | 100 |
| $600,000 – $999,999 | $ | 200 |
| $1 million – $5 million | $ | 600 |
| Greater than $5 million | $ | 1,200 |

(d) Transportation.

|  |  |  |
| --- | --- | --- |
| Less than $500,000 | $ | 125 |
| $500,000 – $999,999 | $ | 250 |
| $1 million – $4,999,999 | $ | 1,000 |
| Greater than $5 million | $ | 2,500 |

(5) Subject to subsection (8) of this section, fees shall be collected through the secretary's registration system for corporations and limited liability companies in collaboration with the department's business licensing service.

(6) The department must send a list of businesses in assessed sectors to the secretary and the authority annually at a time and in a form and format as mutually agreed to by the department, the secretary, and the authority. The list must identify lodging separately from other assessed sectors. For those businesses, except lodging, it may also include information concerning the amount and payment of fees.

(7) Any business subject to a fee under this section may be subject to a random compliance review by the department to determine if the correct fee was paid.

(8) As the department transitions to a new excise tax collection system, it must incorporate collection of the fees in this chapter from all businesses in the assessed sectors.

(9) Fees may not be imposed under this section if the legislature redirects or changes the use of the statewide tourism marketing account to a use other than that authorized in this chapter, fees shall not be imposed under this section.

NEW SECTION. **Sec.**  USE OF FUNDS. (1) The authority shall 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;

(c) Paying for the costs to administer section 6 of this act and chapter 82.--- RCW (the new chapter created in section 16 of this act) as provided in section 5(2) of this act; and

(d) Paying for other administrative expenses of the authority, which shall 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 all sectors of the tourism industry and having geographically diverse representation. Sectors of the tourism industry must include adventure/recreation, arts and culture, attractions, economic development organizations, destination marketing organizations, lodging, food service, retail, transportation, and tribes. It may also include representatives of other organizations with an interest in promoting statewide tourism. Geographic diversity must 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 shall 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) The authority may suspend the fees if the authority, by a majority vote, determines that the program as implemented pursuant to subsection (1)(a) of this section is not effective.

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

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

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

(2) "Occupied room" means a room in a facility operated by a lodging business, if the room is used by an overnight guest for consideration.

(3) Unless the context clearly requires otherwise, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

NEW SECTION. **Sec.**  (1) There is imposed on every lodging business in the state a charge of fifteen cents per occupied room per night. The charge is the sole obligation of the lodging business, but the lodging business may separately itemize the charge on any invoice or other document of sale provided to the guest.

(2) Chapter 82.32 RCW applies to the charge imposed in this section. The due dates, reporting periods, and return requirements applicable to a lodging business for the taxes imposed in chapters 82.04 and 82.08 RCW also apply to the charge on lodging imposed in this section.

(3) All revenue collected under this section, including penalties and interest on delinquent lodging charges, must be deposited in the statewide tourism marketing account.

NEW SECTION. **Sec.**  The charge on lodging authorized under this chapter does not apply with respect to lodging if the charge made for the lodging is not subject to the tax imposed in chapter 82.08 RCW.

NEW SECTION. **Sec.**  RCW 82.32.805 and 82.32.808 do not apply to this chapter.

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

**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.**  Sections 1 through 8 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec.**  Sections 9 through 13 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

**--- END ---**