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**SUBSTITUTE HOUSE BILL 1938**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Community Development, Housing & Tribal Affairs (originally sponsored by Representatives Appleton, Johnson, Ryu, Muri, Van De Wege, Tarleton, Moscoso, S. Hunt, and Tharinger)

READ FIRST TIME 02/20/15.

1 AN ACT Relating to tourism marketing; reenacting and amending RCW  
2 43.79A.040; adding a new chapter to Title 43 RCW; adding a new  
3 chapter to Title 82 RCW; providing an effective date; and declaring  
4 an emergency.

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

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

19 (2) The purpose of this act is to establish the framework and  
20 funding for a statewide tourism marketing program. The program needs  
21 to have a structure that includes significant, stable, long-term

1 funding, and it should be implemented and managed by the tourism  
2 industry. The source of funds should be from major sectors of the  
3 tourism industry with government assistance in collecting these funds  
4 and providing accountability for their expenditure.

5 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
6 section apply throughout this chapter unless the context clearly  
7 requires otherwise.

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

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

13 (a) Lodging; and

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

16 (3) "Attractions and entertainment" means businesses whose  
17 primary business activity, on the effective date of this section, is  
18 within any of the following NAICS codes or their successor codes:  
19 561510, 561520, 7111, 711211, 711212, 711219, 7113, 711410, 711510,  
20 712110, 712120, 712130, 712190, 713110, 713120, 713290, 713910  
21 (publicly owned only), 713930, and 713990.

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

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

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

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

34 (8) "Food service" means businesses whose primary business  
35 activity, on the effective date of this section, is within any of the  
36 following NAICS codes or their successor codes: 722110, 722212,  
37 722213, and 722410.

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

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

9 (11) "Retail" means businesses whose primary business activity,  
10 on the effective date of this section, is within any of the following  
11 NAICS codes or their successor codes: 445310, 4481, 448210, 448310,  
12 448320, 451110, 451120, 451211, 452111, 452112, 452910, 452990,  
13 453110, and 453220.

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

15 (13) "Statewide tourism marketing account" means the account  
16 created pursuant to section 5 of this act in the custody of the state  
17 treasurer. This account shall be the depository for fees collected  
18 pursuant to section 6 of this act and charges collected pursuant to  
19 section 10 of this act.

20 (14) "Transportation" means businesses whose primary business  
21 activity, on the effective date of this section, is within any of the  
22 following NAICS codes or their successor codes: 483212, 485310,  
23 485320, 485510, 48599, 487, 532111, and 812930.

24 NEW SECTION. **Sec. 3.** WASHINGTON TOURISM MARKETING AUTHORITY—  
25 ESTABLISHED. (1) The Washington tourism marketing authority is  
26 established as a public body corporate and politic, constituting an  
27 instrumentality of the state of Washington.

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

32 (3) The authority must establish procedures to:

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

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

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

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

6 NEW SECTION. **Sec. 4.** BOARD OF DIRECTORS. (1)(a) The authority  
7 shall be governed by a board of directors. The board of directors  
8 shall be composed of thirteen members.

9 (b) Board membership shall be allocated to the assessed sectors  
10 as follows:

11 (i) Lodging, four members;

12 (ii) Food service, three members;

13 (iii) Retail, two members;

14 (iv) Attractions and entertainment, one member; and

15 (v) Transportation, one member.

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

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

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

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

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

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

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

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

37 (7) Any member of the board may be removed for misfeasance,  
38 malfeasance, or willful neglect of duty after notice and a public

1 hearing, unless the notice and hearing are expressly waived in  
2 writing by the affected member.

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

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

10 (10) No board member of the authority may serve on the board of  
11 an organization that could be considered for the contract authorized  
12 by section 7 of this act.

13 (11) The board shall meet at least quarterly.

14 NEW SECTION. **Sec. 5.** STATEWIDE TOURISM MARKETING ACCOUNT. (1)  
15 The statewide tourism marketing account is created in the custody of  
16 the state treasurer. All receipts from fees under section 6 of this  
17 act and the charge on lodging businesses imposed in section 10 of  
18 this act shall be deposited into the account. Expenditures from the  
19 account may be used only for expenses related to implementation of a  
20 statewide tourism marketing program, including continuing  
21 administrative expenses of the department of revenue and the  
22 secretary associated with administration of section 6 of this act and  
23 chapter 82.-- RCW (the new chapter created in section 16 of this  
24 act). The chair of the authority or the chair's designee may  
25 authorize expenditures from the account. In the event of a dispute  
26 concerning expenditure authorization, a majority of the board may  
27 authorize expenditures for the account. The account is not subject to  
28 appropriation or allotment procedures for expenditures.

29 (2) Expenses of the department of revenue and the secretary to  
30 administer section 6 of this act and chapter 82.-- RCW (the new  
31 chapter created in section 16 of this act) must be reimbursed from  
32 the statewide tourism marketing account. The board, secretary, and  
33 director may agree to a reimbursement schedule.

34 NEW SECTION. **Sec. 6.** AUTHORIZATION AND COLLECTION OF FEES. (1)  
35 Fees shall be imposed on all businesses in those assessed sectors  
36 included in section 2(2)(b) of this act and that are required to  
37 annually renew a license or registration with the secretary.

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

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

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

18 (a) Food service.

19	Less than \$500,000	\$ 25
20	\$500,000 – \$999,999	\$ 175
21	\$1,000,000 – \$1,499,999	\$ 350
22	\$1,500,000 – \$1,999,999	\$ 525
23	\$2,000,000 – \$2,499,999	\$ 700
24	\$2,500,000 – \$2,999,999	\$ 875
25	\$3,000,000 – \$3,499,999	\$ 1,050
26	\$3,500,000 – \$3,999,999	\$ 1,225
27	\$4,000,000 – \$4,499,999	\$ 1,400
28	\$4,500,000 – \$4,999,999	\$ 1,575
29	\$5,000,000 – \$5,499,999	\$ 1,750
30	\$5,500,000 – \$5,999,999	\$ 1,925
31	\$6,000,000 – \$6,499,999	\$ 2,100
32	\$6,500,000 – \$6,999,999	\$ 2,275
33	\$7,000,000 – \$7,499,999	\$ 2,450
34	\$7,500,000 – \$7,999,999	\$ 2,625
35	\$8,000,000 – \$8,499,999	\$ 2,800

1	\$8,500,000 – \$8,999,999	\$ 2,975
2	\$9,000,000 – \$9,499,999	\$ 3,150
3	\$9,500,000 – \$9,999,999	\$ 3,325
4	Over \$10,000,000	\$ 3,500

5 (b) Attractions and entertainment.

6	\$200,000 – \$599,999	\$ 100
7	\$600,000 – \$999,999	\$ 250
8	\$1,000,000 – \$1,999,999	\$ 400
9	\$2,000,000 – \$4,999,999	\$ 1,000
10	Greater than \$5 million	\$ 2,500

11 (c) Retail.

12	\$200,000 – \$599,999	\$ 100
13	\$600,000 – \$999,999	\$ 200
14	\$1 million – \$5 million	\$ 600
15	Greater than \$5 million	\$ 1,200

16 (d) Transportation.

17	Less than \$500,000	\$ 125
18	\$500,000 – \$999,999	\$ 250
19	\$1 million – \$4,999,999	\$ 1,000
20	Greater than \$5 million	\$ 2,500

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

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

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

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

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

8 NEW SECTION. **Sec. 7.** USE OF FUNDS. (1) The authority shall use  
9 any funds legally available to it for any purpose specifically  
10 authorized by this chapter, including:

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

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

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

21 (d) Paying for other administrative expenses of the authority,  
22 which shall not exceed one and one-half percent of funds collected in  
23 any fiscal year.

24 (2) In entering into a contract for a statewide marketing  
25 program, the authority must require the statewide nonprofit  
26 organization to be governed by a board reflecting all sectors of the  
27 tourism industry and having geographically diverse representation.  
28 Sectors of the tourism industry must include adventure/recreation,  
29 arts and culture, attractions, economic development organizations,  
30 destination marketing organizations, lodging, food service, retail,  
31 transportation, and tribes. It may also include representatives of  
32 other organizations with an interest in promoting statewide tourism.  
33 Geographic diversity must be based on regions established by the  
34 nonprofit organization. If, after appropriate notice, the authority  
35 determines that there is only one qualified entity, then the  
36 authority may issue a sole source contract. The authority shall  
37 include a provision in such a contract that will enable the  
38 contractor to pay expenses in a timely manner.



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

7 (4) The authority may suspend the fees if the authority, by a  
8 majority vote, determines that the program as implemented pursuant to  
9 subsection (1)(a) of this section is not effective.

10 NEW SECTION. **Sec. 8.** SHORT TITLE. This chapter may be known and  
11 cited as the statewide tourism marketing act.

12 NEW SECTION. **Sec. 9.** The definitions in this section apply  
13 throughout this chapter unless the context clearly requires  
14 otherwise.

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

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

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

24 NEW SECTION. **Sec. 10.** (1) There is imposed on every lodging  
25 business in the state a charge of fifteen cents per occupied room per  
26 night. The charge is the sole obligation of the lodging business, but  
27 the lodging business may separately itemize the charge on any invoice  
28 or other document of sale provided to the guest.

29 (2) Chapter 82.32 RCW applies to the charge imposed in this  
30 section. The due dates, reporting periods, and return requirements  
31 applicable to a lodging business for the taxes imposed in chapters  
32 82.04 and 82.08 RCW also apply to the charge on lodging imposed in  
33 this section.

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

1        NEW SECTION.    **Sec. 11.**    The charge on lodging authorized under  
2 this chapter does not apply with respect to lodging if the charge  
3 made for the lodging is not subject to the tax imposed in chapter  
4 82.08 RCW.

5        NEW SECTION.    **Sec. 12.**    RCW 82.32.805 and 82.32.808 do not apply  
6 to this chapter.

7        NEW SECTION.    **Sec. 13.**    The department may adopt rules to  
8 implement this chapter.

9        **Sec. 14.**    RCW 43.79A.040 and 2013 c 251 s 5 and 2013 c 88 s 1 are  
10 each reenacted and amended to read as follows:

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

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

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

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

30        (b) The following accounts and funds must receive their  
31 proportionate share of earnings based upon each account's or fund's  
32 average daily balance for the period: The Washington promise  
33 scholarship account, the Washington advanced college tuition payment  
34 program account, the accessible communities account, the community  
35 and technical college innovation account, the agricultural local  
36 fund, the American Indian scholarship endowment fund, the foster care  
37 scholarship endowment fund, the foster care endowed scholarship trust

1 fund, the contract harvesting revolving account, the Washington state  
2 combined fund drive account, the commemorative works account, the  
3 county enhanced 911 excise tax account, the toll collection account,  
4 the developmental disabilities endowment trust fund, the energy  
5 account, the fair fund, the family leave insurance account, the food  
6 animal veterinarian conditional scholarship account, the fruit and  
7 vegetable inspection account, the future teachers conditional  
8 scholarship account, the game farm alternative account, the GET ready  
9 for math and science scholarship account, the Washington global  
10 health technologies and product development account, the grain  
11 inspection revolving fund, the industrial insurance rainy day fund,  
12 the juvenile accountability incentive account, the law enforcement  
13 officers' and firefighters' plan 2 expense fund, the local tourism  
14 promotion account, the multiagency permitting team account, the  
15 pilotage account, the produce railcar pool account, the regional  
16 transportation investment district account, the rural rehabilitation  
17 account, the statewide tourism marketing account, the stadium and  
18 exhibition center account, the youth athletic facility account, the  
19 self-insurance revolving fund, the children's trust fund, the  
20 Washington horse racing commission Washington bred owners' bonus fund  
21 and breeder awards account, the Washington horse racing commission  
22 class C purse fund account, the individual development account  
23 program account, the Washington horse racing commission operating  
24 account, the life sciences discovery fund, the Washington state  
25 heritage center account, the reduced cigarette ignition propensity  
26 account, the center for childhood deafness and hearing loss account,  
27 the school for the blind account, the Millersylvania park trust fund,  
28 the public employees' and retirees' insurance reserve fund, and the  
29 radiation perpetual maintenance fund.

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

37 (d) Any state agency that has independent authority over accounts  
38 or funds not statutorily required to be held in the custody of the  
39 state treasurer that deposits funds into a fund or account in the  
40 custody of the state treasurer pursuant to an agreement with the

1 office of the state treasurer shall receive its proportionate share  
2 of earnings based upon each account's or fund's average daily balance  
3 for the period.

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

7 NEW SECTION. **Sec. 15.** Sections 1 through 8 of this act  
8 constitute a new chapter in Title 43 RCW.

9 NEW SECTION. **Sec. 16.** Sections 9 through 13 of this act  
10 constitute a new chapter in Title 82 RCW.

11 NEW SECTION. **Sec. 17.** This act is necessary for the immediate  
12 preservation of the public peace, health, or safety, or support of  
13 the state government and its existing public institutions, and takes  
14 effect July 1, 2015.

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