
HOUSE BILL 2552

State of Washington

64th Legislature

2016 Regular Session

By Representative Condotta

Read first time 01/14/16. Referred to Committee on Community Development, Housing & Tribal Affairs.

1 AN ACT Relating to tourism marketing; reenacting and amending RCW
2 43.79A.040; adding a new section to chapter 82.04 RCW; adding a new
3 chapter to Title 43 RCW; and adding a new chapter to Title 82 RCW.

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

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

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

1 industry. The source of funds should be from major sectors of the
2 tourism industry with government assistance in collecting these funds
3 and providing accountability for their expenditure. The business and
4 occupation tax credit authorized for contributions made in this
5 chapter will bring direct benefits to those making contributions by
6 bringing more tourists into the state who will patronize the
7 participating businesses.

8 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
9 section apply throughout this chapter unless the context clearly
10 requires otherwise.

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

13 (a) Lodging; and

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

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

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

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

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

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

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

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

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

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

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

- 1 (j) Operating an amusement park, theme park, water park, or
2 similar facility;
- 3 (k) Operating an amusement arcade or parlor, including a
4 billiards parlor;
- 5 (l) Operating a golf course open to the public;
- 6 (m) Operating a driving range or miniature golf facility;
- 7 (n) Operating a downhill or cross-country skiing area, including
8 operating equipment such as ski lifts and tows;
- 9 (o) Acting as a travel agent or tour operator taxable under RCW
10 82.04.260(5);
- 11 (p) Engaging in the business of operating contests of chance
12 taxable under RCW 82.04.285; or
- 13 (q) Operating a "marina," which means providing docking or
14 storage facilities primarily or exclusively for pleasure craft
15 owners, with or without any related activities, such as retailing
16 fuel and marine supplies, and repairing, maintaining, or renting
17 pleasure craft.
- 18 (3) "Authority" means the Washington tourism marketing authority
19 created in section 3 of this act.
- 20 (4) "Business" means a person as defined in RCW 82.04.030,
21 required to file tax returns with the department for purposes of
22 reporting taxes due under chapter 82.04, 82.08, or 82.16 RCW.
- 23 (5) "Contribution" means cash contributions.
- 24 (6) "Director" means the director of the department of revenue.
- 25 (7) "Food service" means businesses whose primary business
26 activity in this state is operating a "restaurant" as defined in RCW
27 82.08.9995.
- 28 (8) "Lodging" means a person that furnishes lodging taxable by
29 the state under chapter 82.08 RCW at a facility that contains twenty
30 or more lodging units.
- 31 (9) "Person" has the same meaning as provided in RCW 82.04.030.
- 32 (10) "Primary" means:
- 33 (a) The business activity that generated more than fifty percent
34 of a business's total adjusted gross revenue during the preceding
35 calendar year or, if the person did not engage in business during the
36 preceding calendar year, during the current calendar year; or
- 37 (b) The business activity that generated the most adjusted gross
38 revenue during the preceding calendar year or, if the person did not
39 engage in business during the preceding calendar year, during the
40 current calendar year, if the business engaged in more than two

1 business activities during the relevant time period and none of the
2 activities generated more than fifty percent of the business's total
3 adjusted gross revenue.

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

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

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

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

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

30 (b) "Retail" does not include:

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

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

35 (iii) Establishments primarily making retail sales in any one of
36 the following categories: Electronics; appliances; health and
37 personal care products, such as prescription and nonprescription
38 drugs and medicines, first-aid products, toiletries, beauty supplies,
39 perfume, personal grooming products, dietary supplements as defined
40 in RCW 82.08.0293; durable medical equipment, prosthetic devices, or

1 mobility enhancing equipment as those terms are defined in RCW
2 82.08.0283; groceries; gasoline, or gasoline and very limited lines
3 of groceries and other merchandise; specialty food items, including
4 bakeries, meat markets, and fish and seafood markets; hardware,
5 building materials, lawn and garden supplies, or any combination
6 thereof; motor vehicles or watercraft; automotive parts and
7 accessories, including tires; furniture; nursery and garden products;
8 outdoor power equipment; home furnishings; or used merchandise.

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

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

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

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

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

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

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

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

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

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

37 (2) The authority is responsible for acting as a business
38 management organization on behalf of the citizens of the state to

1 manage financial resources and contract for statewide tourism
2 marketing services.

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

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

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

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

13 (i) Lodging, four members;

14 (ii) Food service, three members;

15 (iii) Retail, two members;

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

17 (v) Transportation, one member.

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

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

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

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

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

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

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

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

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

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

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

12 (10) The board must meet at least quarterly.

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

16 NEW SECTION. **Sec. 5.** STATEWIDE TOURISM MARKETING ACCOUNT. (1)

17 The statewide tourism marketing account is created in the custody of
18 the state treasurer. All receipts from contributions under section 6
19 of this act and legislative appropriations must be deposited into the
20 account, except as provided in subsection (2) of this section.
21 Expenditures from the account may be used only for expenses related
22 to implementation of a statewide tourism marketing program. The chair
23 of the authority or the chair's designee may authorize expenditures
24 from the account. In the event of a dispute concerning expenditure
25 authorization, a majority of the board may authorize expenditures for
26 the account. The account is not subject to appropriation or allotment
27 procedures for expenditures.

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

33 NEW SECTION. **Sec. 6.** USE OF FUNDS. (1) The authority must use
34 any funds legally available to it for any purpose specifically
35 authorized by this chapter, including:

36 (a) Entering into a contract for a multiple-year statewide
37 tourism marketing plan with a statewide nonprofit organization
38 existing on the effective date of this section whose sole purpose is

1 marketing Washington to tourists and who meets the requirements of
2 subsection (2) of this section;

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

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

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

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

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

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

1 **Sec. 7.** RCW 43.79A.040 and 2013 c 251 s 5 and 2013 c 88 s 1 are
2 each reenacted and amended to read as follows:

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

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

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

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

22 (b) The following accounts and funds must receive their
23 proportionate share of earnings based upon each account's or fund's
24 average daily balance for the period: The Washington promise
25 scholarship account, the Washington advanced college tuition payment
26 program account, the accessible communities account, the community
27 and technical college innovation account, the agricultural local
28 fund, the American Indian scholarship endowment fund, the foster care
29 scholarship endowment fund, the foster care endowed scholarship trust
30 fund, the contract harvesting revolving account, the Washington state
31 combined fund drive account, the commemorative works account, the
32 county enhanced 911 excise tax account, the toll collection account,
33 the developmental disabilities endowment trust fund, the energy
34 account, the fair fund, the family leave insurance account, the food
35 animal veterinarian conditional scholarship account, the fruit and
36 vegetable inspection account, the future teachers conditional
37 scholarship account, the game farm alternative account, the GET ready
38 for math and science scholarship account, the Washington global
39 health technologies and product development account, the grain
40 inspection revolving fund, the industrial insurance rainy day fund,

1 the juvenile accountability incentive account, the law enforcement
2 officers' and firefighters' plan 2 expense fund, the local tourism
3 promotion account, the multiagency permitting team account, the
4 pilotage account, the produce railcar pool account, the regional
5 transportation investment district account, the rural rehabilitation
6 account, the statewide tourism marketing account, the stadium and
7 exhibition center account, the youth athletic facility account, the
8 self-insurance revolving fund, the children's trust fund, the
9 Washington horse racing commission Washington bred owners' bonus fund
10 and breeder awards account, the Washington horse racing commission
11 class C purse fund account, the individual development account
12 program account, the Washington horse racing commission operating
13 account, the life sciences discovery fund, the Washington state
14 heritage center account, the reduced cigarette ignition propensity
15 account, the center for childhood deafness and hearing loss account,
16 the school for the blind account, the Millersylvania park trust fund,
17 the public employees' and retirees' insurance reserve fund, and the
18 radiation perpetual maintenance fund.

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

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

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

36 NEW SECTION. **Sec. 8.** AUTHORIZATION AND COLLECTION OF
37 CONTRIBUTIONS. (1) Applications for tax credits under this chapter
38 must be made to the department before making a contribution to the
39 statewide tourism marketing account. The application must be made to

1 the department in a form and manner prescribed by the department. The
2 application must contain information regarding the proposed amount of
3 contribution to the statewide tourism marketing account, and other
4 information required by the department to determine eligibility. The
5 department must rule on the application within forty-five days.
6 Applications must be approved on a first-come basis.

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

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

16 (4) "Assessed sector" has the same meaning as provided in section
17 2 of this act and "primary business activity" means at least fifty
18 percent of gross income generated is from a business activity in an
19 assessed sector.

20 (5) The department may not accept any applications before January
21 1, 2017.

22 NEW SECTION. **Sec. 9.** CREDIT AUTHORIZED - LIMITATIONS. (1)

23 Subject to the limitations in this chapter, a credit is allowed
24 against the tax imposed by chapter 82.04 RCW for approved
25 contributions that are made by a person to the statewide tourism
26 marketing account.

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

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

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

37 (5) The credit may be claimed against any tax due under chapter
38 82.04 RCW only in the calendar year immediately following the
39 calendar year in which the credit was approved by the department and

1 the contribution was made to the statewide tourism marketing account.
2 Credits may not be carried over to subsequent years. No refunds may
3 be granted for credits under this chapter.

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

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

10 NEW SECTION. **Sec. 10.** FILING REQUIREMENTS. (1) To claim a
11 credit under this chapter, a person must electronically file with the
12 department all returns, forms, and other information the department
13 requires in an electronic format as provided or approved by the
14 department. Any return, form or information required to be filed in
15 an electronic format under this section is not filed until received
16 by the department in an electronic format. As used in this section,
17 "returns" has the same meaning as "return" in RCW 82.32.050.

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

20 NEW SECTION. **Sec. 11.** The department may adopt rules to
21 implement this chapter.

22 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.04
23 RCW to read as follows:

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

27 NEW SECTION. **Sec. 13.** (1) This section is the tax preference
28 performance statement for the tax preference contained in section 12
29 of this act. This performance statement is only intended to be used
30 for subsequent evaluation of the tax preference. It is not intended
31 to create a private right of action by any party or be used to
32 determine eligibility for preferential tax treatment.

33 (2) It is the legislature's specific public policy objective to
34 support the state's tourism industry in implementing and managing the
35 statewide tourism marketing program authorized by this act.
36 Therefore, to maximize the effectiveness of contributions authorized

1 by this act in achieving the goals of this act, the legislature
2 intends to provide a permanent business and occupation tax exemption
3 for the contributions collected under section 8 of this act and paid
4 over by the Washington tourism marketing authority to a nonprofit
5 entity chosen to implement and manage the statewide tourism marketing
6 program authorized under this act. Because the legislature intends
7 for the exemption in section 12 of this act to be permanent, it is
8 exempt from the ten-year expiration provision in RCW 82.32.805(1)(a).

9 NEW SECTION. **Sec. 14.** SHORT TITLE. This chapter may be known
10 and cited as the statewide tourism marketing act.

11 NEW SECTION. **Sec. 15.** Sections 1 through 6 and 14 of this act
12 constitute a new chapter in Title 43 RCW.

13 NEW SECTION. **Sec. 16.** Sections 8 through 11 of this act
14 constitute a new chapter in Title 82 RCW.

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