

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO THE RESORT TAX; REPLACING  
5 THE RESORT TAX WITH A LUXURY TAX; ALLOWING ANY INCORPORATED MUNICIPALITY TO LEVY A  
6 LUXURY TAX UPON APPROVAL BY THE ELECTORS; ALLOWING AN UNINCORPORATED AREA TO  
7 CREATE A LUXURY TAX AREA AND LEVY A LUXURY TAX; REMOVING THE PROVISION THAT  
8 ADDITIONAL RESTAURANT BEER AND WINE LICENSES MAY BE ISSUED IN A RESORT COMMUNITY  
9 UNDER CERTAIN CONDITIONS; AND AMENDING SECTIONS 7-6-1501, 7-6-1502, 7-6-1503, 7-6-1504,  
10 7-6-1505, 7-6-1506, 7-6-1507, 7-6-1508, 7-6-1509, 7-6-1531, 7-6-1532, 7-6-1533, 7-6-1534, 7-6-1535, 7-6-1536,  
11 7-6-1537, 7-6-1538, 7-6-1539, 7-6-1540, 7-6-1541, 7-6-1542, 7-6-1543, 7-6-1544, 7-6-1545, 7-6-1546, 7-6-1548,  
12 7-6-1549, 7-6-1550, 7-6-1551, 7-7-4424, 7-7-4428, 7-11-1002, 15-65-101, 15-65-121, 15-65-122, AND 16-4-420,  
13 MCA."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16  
17 **Section 1.** Section 7-6-1501, MCA, is amended to read:

18 **"7-6-1501. Resort Luxury tax -- definitions.** As used in 7-6-1501 through 7-6-1509, the following  
19 definitions apply:

20 (1) "Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient  
21 visitors or tourists. The term does not include food purchased unprepared or unserved, medicine, medical  
22 supplies and services, appliances, hardware supplies and tools, or any necessities of life.

23 (2) "Luxury tax area" means an unincorporated area that is a defined contiguous geographic area where  
24 a majority of the electors approve a question to establish a luxury tax area and levy a luxury tax provided for in  
25 7-6-1503.

26 ~~(2)~~(3) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical  
27 maintenance purposes, whether or not prescribed by a physician.

28 ~~(3)~~(4) "Medicine" means substances sold for curative or remedial properties, including both physician  
29 prescribed and over-the-counter medications.

30 ~~(4)~~ "Resort area" means an area that:



- 1 ~~\_\_\_\_\_ (a) is an unincorporated area and is a defined contiguous geographic area;~~  
 2 ~~\_\_\_\_\_ (b) has a population of less than 2,500 according to the most recent federal census;~~  
 3 ~~\_\_\_\_\_ (c) derives the major portion of its economic well-being from businesses catering to the recreational and~~  
 4 ~~personal needs of persons traveling to or through the area for purposes not related to their income production;~~  
 5 ~~and~~  
 6 ~~\_\_\_\_\_ (d) has been designated by the department of commerce as a resort area prior to its establishment by~~  
 7 ~~the county commissioners as provided in 7-6-1508.~~  
 8 ~~\_\_\_\_\_ (5) "Resort community" means a community that:~~  
 9 ~~\_\_\_\_\_ (a) is an incorporated municipality;~~  
 10 ~~\_\_\_\_\_ (b) has a population of less than 5,500 according to the most recent federal census;~~  
 11 ~~\_\_\_\_\_ (c) derives the primary portion of its economic well-being related to current employment from businesses~~  
 12 ~~catering to the recreational and personal needs of persons traveling to or through the municipality for purposes~~  
 13 ~~not related to their income production; and~~  
 14 ~~\_\_\_\_\_ (d) has been designated by the department of commerce as a resort community."~~

15  
 16 **Section 2.** Section 7-6-1502, MCA, is amended to read:  
 17 **"7-6-1502. Resort community Luxury taxing authority -- specific delegation.** As required by 7-1-112,  
 18 7-6-1501 through 7-6-1507 specifically delegate to the electors of each respective ~~resort community~~ incorporated  
 19 municipality the power to authorize their municipality to impose a ~~resort~~ luxury tax within the corporate boundary  
 20 of the municipality as provided in 7-6-1501 through 7-6-1507."

21  
 22 **Section 3.** Section 7-6-1503, MCA, is amended to read:  
 23 **"7-6-1503. Limit on resort luxury tax rate -- goods and services subject to tax.** (1) The rate of the  
 24 ~~resort~~ luxury tax must be established by the election petition or resolution provided for in 7-6-1504, but the rate  
 25 may not exceed 3%.

26 (2) (a) The ~~resort~~ luxury tax is a tax on the retail value of all goods and services sold, except for goods  
 27 and services sold for resale, within the ~~resort community or area~~ incorporated municipality or luxury tax area by  
 28 the following establishments:  
 29 (i) hotels, motels, and other lodging or camping facilities;  
 30 (ii) restaurants, fast food stores, and other food service establishments;

1 (iii) taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine, liquor, or  
 2 other alcoholic beverages by the drink; and

3 (iv) destination ski resorts and other destination recreational facilities.

4 (b) Establishments that sell luxuries shall collect a tax on ~~such~~ those luxuries."

5

6 **Section 4.** Section 7-6-1504, MCA, is amended to read:

7 **"7-6-1504. Resort Luxury tax -- election required -- procedure -- notice.** (1) ~~A resort community or~~  
 8 An incorporated municipality or luxury tax area may not impose or, except as provided in 7-6-1505, amend or  
 9 repeal a ~~resort luxury tax~~ unless the ~~resort luxury tax~~ question has been submitted to the electorate of the ~~resort~~  
 10 ~~community or~~ incorporated municipality or luxury tax area and approved by a majority of the electors voting on  
 11 the question.

12 (2) The ~~resort luxury tax~~ question may be presented to the electors of:

13 (a) ~~a resort community~~ an incorporated municipality by a petition of the electors as provided by 7-1-4130,  
 14 7-5-132, and 7-5-134 through 7-5-137 or by a resolution of the governing body of the ~~resort community~~  
 15 incorporated municipality; or

16 (b) a ~~resort luxury tax~~ area by a resolution of the board of county commissioners, following receipt of a  
 17 petition of electors as provided in 7-6-1508.

18 (3) If a ~~resort luxury tax~~ area is in more than one county, the ~~resort luxury tax~~ question must be presented  
 19 to and approved by the electors in the ~~resort luxury tax~~ area of each county.

20 (4) The petition or resolution referring the taxing question must state:

21 (a) the rate of the ~~resort luxury tax~~;

22 (b) the duration of the ~~resort luxury tax~~;

23 (c) the date when the tax becomes effective, which ~~date~~ may not be earlier than 35 days after the  
 24 election; and

25 (d) the purposes that may be funded by the ~~resort luxury tax~~ revenue.

26 (5) Upon receipt of an adequate petition, the governing body may:

27 (a) call a special election on the ~~resort luxury tax~~ question; or

28 (b) have the ~~resort luxury tax~~ question placed on the ballot at the next regularly scheduled election.

29 (6) (a) Before the ~~resort luxury tax~~ question is submitted to the electorate of ~~a resort community or~~ an  
 30 incorporated municipality or luxury tax area, the governing body of the ~~resort community~~ incorporated municipality

1 or the board of county commissioners in the county in which the ~~resort~~ luxury tax area is located shall publish  
 2 notice of the goods and services subject to the ~~resort~~ luxury tax; in a newspaper that meets the qualifications of  
 3 subsection (6)(b). The notice must be published twice, with at least 6 days separating publications. The first  
 4 publication must be no more than 30 days prior to the election and the last no less than 3 days prior to the  
 5 election.

6 (b) The newspaper must be:

7 (i) of general, paid circulation with a second-class mailing permit;

8 (ii) published at least once a week; and

9 (iii) published in the county where the election will take place.

10 (7) The question of the imposition of a ~~resort~~ luxury tax may not be placed before the electors more than  
 11 once in any fiscal year."

12

13 **Section 5.** Section 7-6-1505, MCA, is amended to read:

14 **"7-6-1505. Resort Luxury tax administration.** (1) In this section, "governing body" means:

15 (a) the governing body of ~~a resort community~~ an incorporated municipality;

16 (b) if the ~~resort~~ luxury tax has been approved by the electors of a ~~resort~~ luxury tax area, the board of  
 17 county commissioners; or

18 (c) if the electors of the ~~resort~~ luxury tax area establish a ~~resort~~ luxury tax area district, the district board  
 19 of directors.

20 (2) Not less than 30 days prior to the date that the ~~resort~~ luxury tax becomes effective, the governing  
 21 body shall enact an administrative ordinance governing the collection and reporting of the ~~resort~~ luxury tax taxes. This  
 22 administrative ordinance may be amended at any time as may be necessary to effectively administer the ~~resort~~  
 23 luxury tax.

24 (3) The administrative ordinance must specify:

25 (a) the times that taxes collected by businesses are to be remitted to the governing body;

26 (b) the office, officer, or employee of the governing body responsible for receiving and accounting for  
 27 the ~~resort~~ luxury tax receipts;

28 (c) the office, officer, or employee of the governing body responsible for enforcing the collection of ~~resort~~  
 29 luxury tax taxes and the methods and procedures to be used in enforcing the collection of ~~resort~~ luxury tax taxes due;

30 and

1 (d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the  
2 administrative ordinance. The penalties may include:

3 (i) criminal penalties not to exceed a fine of \$1,000 or 6 months' imprisonment, or both;

4 (ii) civil penalties if the governing body prevails in a suit for the collection of ~~resort~~ luxury taxes, not to  
5 exceed 50% of the ~~resort~~ luxury taxes found due plus the costs and attorney fees incurred by the governing body  
6 in the action;

7 (iii) revocation of a county or municipal business license held by the offender; and

8 (iv) any other penalties that may be applicable for violation of an ordinance.

9 (4) The administrative ordinance may include:

10 (a) further clarification and specificity in the categories of goods and services that are subject to the  
11 ~~resort~~ luxury tax consistent with 7-6-1503;

12 (b) authorization for business administration and prepayment discounts. The discount authorization may  
13 allow each vendor and commercial establishment to:

14 (i) withhold up to 5% of the ~~resort~~ luxury taxes collected to defray their costs for the administration of the  
15 tax collection; or

16 (ii) receive a refund of up to 5% of the ~~resort~~ luxury tax payment received from them by the governing  
17 body 10 days prior to the collection due date established by the administrative ordinance.

18 (c) other administrative details necessary for the efficient and effective administration of the tax."  
19

20 **Section 6.** Section 7-6-1506, MCA, is amended to read:

21 **"7-6-1506. Use of ~~resort community~~ luxury tax revenue -- bond issue -- pledge.** (1) Unless otherwise  
22 restricted by the voter-approved tax authorization provided for in 7-6-1504, ~~a resort community or a resort an~~  
23 incorporated municipality or luxury tax area district as defined in 7-6-1531 may appropriate and expend revenue  
24 derived from a ~~resort~~ luxury tax for any activity, undertaking, or administrative service that the municipality or  
25 ~~resort~~ luxury tax area district is authorized by law to perform, including costs resulting from the imposition of the  
26 tax.

27 (2) ~~A resort community~~ An incorporated municipality may issue bonds to provide, install, or construct any  
28 of the public facilities, improvements, or undertakings authorized under 7-7-4101, 7-7-4404, and 7-12-4102.

29 (3) Bonds issued under this section must be authorized by a resolution of the governing body, stating  
30 the terms, conditions, and covenants of the municipality or ~~resort~~ luxury tax area district as the governing body

1 considers appropriate. The bonds may be sold at a discount at a public or private sale.

2 (4) ~~A resort community~~ An incorporated municipality may pledge for repayment of bonds issued under  
 3 this section the revenue derived from a ~~resort luxury~~ tax, special assessments levied for and revenue collected  
 4 from the facilities, improvements, or undertakings for which the bonds are issued, and any other source of  
 5 revenue authorized by the legislature to be imposed or collected by the ~~resort community~~ incorporated  
 6 municipality. The bonds do not constitute debt for purposes of any statutory debt limitation, provided that in the  
 7 resolution authorizing the issuance of the bonds, the municipality determines that the ~~resort luxury~~ tax revenue,  
 8 special assessments levied for and revenue from the facilities, improvements, or undertakings, or other sources  
 9 of revenue, if any, pledged to the payment of the bonds will be sufficient in each year to pay the principal and  
 10 interest on the bonds when due.

11 (5) Bonds may not be issued pledging proceeds of the ~~resort luxury~~ tax for repayment unless the  
 12 municipality in the resolution authorizing issuance of the bonds determines that in any fiscal year the annual  
 13 revenue expected to be derived from the ~~resort luxury~~ tax, less the amount required to reduce property taxes  
 14 pursuant to 7-6-1507, equals at least 125% of the average amount of the principal and interest payable from the  
 15 ~~resort luxury~~ tax revenue on the bonds and any other outstanding bonds payable from the ~~resort luxury~~ tax except  
 16 any bonds to be refunded upon the issuance of the proposed bonds."

17

18 **Section 7.** Section 7-6-1507, MCA, is amended to read:

19 **"7-6-1507. ~~Resort community~~ Incorporated municipality luxury tax -- property tax relief.** (1)  
 20 Annually anticipated receipts from the ~~resort luxury~~ tax must be applied to reduce the municipal property tax levy  
 21 for the fiscal year in an amount equal to at least 5% of the ~~resort luxury tax revenues~~ revenue derived during the  
 22 preceding fiscal year.

23 (2) ~~A resort community~~ An incorporated municipality that received more ~~resort luxury tax revenues~~  
 24 revenue than had been included in the annual municipal budget shall establish a municipal property tax relief  
 25 fund. All ~~resort luxury tax revenues~~ revenue received in excess of the budget amount must be placed in the fund.  
 26 The entire fund must be used to replace municipal property taxes in the ensuing fiscal year."

27

28 **Section 8.** Section 7-6-1508, MCA, is amended to read:

29 **"7-6-1508. Establishment of a ~~resort luxury tax~~ area -- taxing authority -- approval by electorate.**

30 (1) The establishment of a ~~resort luxury tax~~ area for the purpose of imposing a ~~resort luxury~~ tax may be initiated

1 by a written petition to the board of county commissioners of the county in which the area is located. The petition  
 2 must contain a description of the proposed ~~resort~~ luxury tax area and must be signed by at least 15% of the  
 3 electors residing in the proposed area.

4 (2) The petition must include a proposal to impose a ~~resort~~ luxury tax within the proposed ~~resort~~ luxury  
 5 tax area, including the rate, duration, effective date, and purpose of the tax as provided in 7-6-1504.

6 (3) Upon receiving a petition to establish a ~~resort~~ luxury tax area, the board of county commissioners  
 7 shall present the question to the electors residing in the proposed ~~resort~~ luxury tax area as provided in 7-6-1504."  
 8

9 **Section 9.** Section 7-6-1509, MCA, is amended to read:

10 **"7-6-1509. Use of ~~resort~~ revenue from luxury area tax.** (1) (a) Except as provided in subsection (1)(b)  
 11 or unless otherwise provided by the resolution approved by the electors under 7-6-1504, the board of county  
 12 commissioners shall appropriate and spend revenue derived from taxes imposed in a ~~resort~~ luxury tax area tax  
 13 for the purpose stated in the resolution.

14 (b) If the electors of a ~~resort~~ luxury tax area have established a ~~resort~~ luxury tax area district, the district  
 15 board of directors shall appropriate and spend revenue derived from taxes imposed in a ~~resort~~ luxury tax area  
 16 tax for the purpose stated in the resolution.

17 (2) If the electors of a ~~resort~~ luxury tax area have not established a ~~resort~~ luxury tax area district, the  
 18 ~~resort~~ luxury tax area shall reimburse the board of county commissioners for costs associated with the collection,  
 19 administration, and litigation of the ~~resort-area tax~~ luxury tax area."  
 20

21 **Section 10.** Section 7-6-1531, MCA, is amended to read:

22 **"7-6-1531. ~~Resort~~ Luxury tax area district -- definitions.** For the purposes of 7-6-1531 through  
 23 ~~7-6-1550~~ 7-6-1551, unless the context requires otherwise, the following definitions apply:

24 (1) "Board" means the board of directors of the ~~resort~~ luxury tax area district.

25 (2) "~~Resort~~ Luxury tax area" means a ~~resort~~ luxury tax area created under 7-6-1508.

26 (3) "~~Resort-area~~ Luxury tax area district" means a district created under 7-6-1531 through ~~7-6-1550~~  
 27 7-6-1551 that has been established as a ~~resort-area~~ luxury tax area under 7-6-1508."  
 28

29 **Section 11.** Section 7-6-1532, MCA, is amended to read:

30 **"7-6-1532. ~~Resort~~ Luxury tax area district authorized.** Electors residing within the boundaries of a

1 ~~resort luxury tax~~ area may create a ~~resort luxury tax~~ area district by proceeding under the provisions of 7-6-1531  
2 through ~~7-6-1550~~ 7-6-1551."

3

4 **Section 12.** Section 7-6-1533, MCA, is amended to read:

5 **"7-6-1533. Petition to create ~~resort luxury tax~~ area district.** (1) Electors residing within a ~~resort luxury~~  
6 ~~tax~~ area may present, at a regular meeting, a petition requesting the establishment of a ~~resort luxury tax~~ area  
7 district to the board of county commissioners of the county in which the proposed ~~resort luxury tax~~ area district  
8 is located. The petition must be signed by at least 10% of the registered voters within the ~~resort luxury tax~~ area.

9 (2) When the area to be included within the proposed ~~resort luxury tax~~ area district lies in more than one  
10 county, the electors within a ~~resort luxury tax~~ area shall present a petition to the board of county commissioners  
11 in each county. Each petition must contain the signatures of at least 10% of the registered voters of the ~~resort~~  
12 ~~luxury tax~~ area that lies within that county.

13 (3) The petition must include a description or map of the existing ~~resort luxury tax~~ area boundaries. The  
14 petition may not describe proposed ~~resort luxury tax~~ area district boundaries that are different from the existing  
15 ~~resort luxury tax~~ area boundaries designated pursuant to 7-6-1508."

16

17 **Section 13.** Section 7-6-1534, MCA, is amended to read:

18 **"7-6-1534. ~~Resort Luxury tax~~ area district -- notice of petition -- hearing required.** (1) The board  
19 of county commissioners shall publish the text of the petition described in 7-6-1533, as provided in 7-1-2121, in  
20 each county in which the proposed ~~resort luxury tax~~ area district lies and shall publish the date, time, and place  
21 that a public hearing on the petition will be held.

22 (2) In addition to the requirements of subsection (1), the board of county commissioners shall publish  
23 the text of the petition described in 7-6-1533 in a newspaper of general circulation in the county within which the  
24 proposed ~~resort luxury~~ area district lies.

25 (3) A person wishing to comment on the creation of the proposed ~~resort luxury tax~~ area district may file,  
26 by first-class mail or otherwise, comments with the clerk and recorder of the county in which the proposed ~~resort~~  
27 ~~luxury tax~~ area district lies.

28 (4) If the ~~resort luxury tax~~ area lies within two or more counties, the provisions of this section apply to  
29 each county."

30

1           **Section 14.** Section 7-6-1535, MCA, is amended to read:

2           **"7-6-1535. Resort Luxury tax area district -- hearing on petition.** (1) At the hearing for which  
3 notification has occurred under 7-6-1533, the board of county commissioners shall accept comments supporting  
4 and opposing the petition. The board of county commissioners may adjourn the hearing from time to time, but  
5 the hearing must be completed within 4 weeks of its commencement.

6           (2) Upon concluding the hearing on the petition, the board of county commissioners shall determine  
7 whether the petition complies with the requirements of 7-6-1531 through ~~7-6-1550~~ 7-6-1551 and enter its  
8 determination into the minutes of a regularly scheduled meeting."

9

10           **Section 15.** Section 7-6-1536, MCA, is amended to read:

11           **"7-6-1536. Resort Luxury tax area district -- election required -- notice.** (1) Upon a determination  
12 that the petition complies with the provisions of 7-6-1531 through ~~7-6-1550~~ 7-6-1551, the board of county  
13 commissioners of each county in which the ~~resort~~ luxury tax area lies shall give notice of an election to be held  
14 in the proposed ~~resort~~ luxury tax area district for the purpose of determining whether a ~~resort~~ luxury tax area  
15 district should be created. The election must be held in conjunction with a regular or primary election.

16           (2) Notice of the election must be made as provided in 13-1-108 and must:

17           (a) describe the purpose of the proposed ~~resort~~ luxury tax area district; and

18           (b) state the name of the proposed ~~resort~~ luxury tax area district, which must include the words "~~resort~~  
19 luxury tax area district".

20

21           **Section 16.** Section 7-6-1537, MCA, is amended to read:

22           **"7-6-1537. Conduct of election on question of creating resort luxury tax area district.** The election  
23 on the question of creating a ~~resort~~ luxury tax area district must be conducted as provided by Title 13 with respect  
24 to general and school elections, except as otherwise provided by 7-6-1531 through ~~7-6-1550~~ 7-6-1551."

25

26           **Section 17.** Section 7-6-1538, MCA, is amended to read:

27           **"7-6-1538. Qualifications to vote on question of creating resort luxury tax area district.** A person  
28 is not entitled to vote at an election authorized by 7-6-1531 through ~~7-6-1550~~ 7-6-1551 unless the person  
29 possesses all of the qualifications required of electors under the general election laws of the state and is a  
30 resident of the proposed ~~resort~~ luxury tax area district."

1

2           **Section 18.** Section 7-6-1539, MCA, is amended to read:

3           **"7-6-1539. Resolution creating resort luxury tax area district upon favorable vote.** (1) If a majority  
4 of the votes cast on the question of creating the ~~resort~~ luxury tax area district are in favor of creating the ~~resort~~  
5 luxury tax area district, the board of county commissioners shall enter into its minutes an order, by resolution,  
6 creating the ~~resort~~ luxury tax area district.

7           (2) Immediately following adoption of the resolution creating the ~~resort~~ luxury tax area district, the board  
8 of county commissioners shall file with the secretary of state and the county clerk and recorder a copy of the  
9 resolution."

10

11           **Section 19.** Section 7-6-1540, MCA, is amended to read:

12           **"7-6-1540. Resort Luxury tax area district -- certificate of incorporation from secretary of state.**  
13 Within 10 days of receiving a copy of the resolution described in 7-6-1539, the secretary of state shall issue a  
14 certificate stating that the ~~resort~~ luxury tax area district has been established under the laws of the state of  
15 Montana. The secretary of state shall file a copy of the certificate with the clerk and recorder in each county in  
16 which the ~~resort~~ luxury tax area district is located."

17

18           **Section 20.** Section 7-6-1541, MCA, is amended to read:

19           **"7-6-1541. General powers of resort luxury tax area district.** (1) A ~~resort~~ luxury tax area district  
20 created under 7-6-1531 through ~~7-6-1550~~ 7-6-1551 may:

- 21           (a) have perpetual succession;  
22           (b) sue and be sued in any court of competent jurisdiction;  
23           (c) acquire by any legal means real and personal property necessary to the full exercise of its powers;  
24           (d) make contracts, employ labor, and do all acts necessary for the full exercise of its powers; and  
25           (e) issue and repay bonds as provided in 7-6-1542.

26           (2) (a) The board for a ~~resort~~ luxury tax area district that does not have perpetual succession may submit  
27 the question of extension of the term of the ~~resort~~ luxury tax area district directly to the voters. If the electorate  
28 extends the term of the ~~resort~~ luxury tax area district, the provisions of this part continue to apply.

29           (b) The board may not submit a question to the voters to extend the term of a ~~resort~~ luxury tax area  
30 district until the expiration of at least half the existing term of the ~~resort~~ luxury tax, as provided for in 7-6-1504.

1 If a vote to extend the term fails, successive votes to extend the term may be taken no more than once each year.

2 (3) The board shall exercise the powers described in 7-6-1531 through ~~7-6-1550~~ 7-6-1551."

3

4 **Section 21.** Section 7-6-1542, MCA, is amended to read:

5 **"7-6-1542. Resort Luxury tax area district board powers related to administration and expenditure**  
 6 **of resort luxury tax revenue -- authorization to issue bonds -- restrictions.** (1) The board of a resort luxury  
 7 tax area district created under 7-6-1531 through ~~7-6-1550~~ 7-6-1551 may:

8 (a) appropriate and expend revenue from a resort luxury tax for any activity, undertaking, or  
 9 administrative service authorized in the resolution creating a resort luxury tax area and adopting a resort luxury  
 10 tax;

11 (b) adopt administrative ordinances necessary to aid in the collection or reporting of resort luxury taxes  
 12 and in the expenditure of resort luxury tax revenue; and

13 (c) except as provided in subsection (2), if approved by four of the five board members, issue bonds to  
 14 provide, install, or construct any of the public facilities, improvements, or capital projects authorized as provided  
 15 in subsection (1)(a) and pledge for repayment of the bonds the revenue derived from the resort luxury tax.

16 (2) A resort luxury tax area district may not issue bonds to construct any single-purpose public facility,  
 17 improvement, or capital project in an amount exceeding \$500,000 without the approval of a majority of the  
 18 qualified electors residing within the boundaries of the resort luxury tax area district voting at a special election  
 19 at a time to be determined by the board. For the purpose of this subsection, the board may authorize a special  
 20 election by majority vote.

21 (3) The provisions of 7-6-1506(3) apply to the issuance of bonds by a resort luxury tax area district, and  
 22 the board shall conclude that the projected useful life of the public facilities, improvements, or capital projects will  
 23 be greater than the term of the bonds that were issued to construct the public facilities, improvements, or capital  
 24 projects.

25 (4) Resort Luxury tax revenue that is pledged by a resort luxury tax area district to the repayment of  
 26 bonds must be sufficient to pay the principal and interest on the bonds in each year when the principal and  
 27 interest is due. Bonds do not constitute debt for the purpose of any statutory debt limitation. A resort luxury tax  
 28 area district may not issue bonds pledging proceeds of the resort luxury tax for repayment unless the board in  
 29 the resolution authorizing issuance of the bonds determines that the annual principal and interest payment on  
 30 the bonds issued will not cumulatively exceed 25% of the average of resort luxury tax revenue received by the

1 district during the preceding 5 years. Bonds may not be issued for a term longer than the remaining duration of  
 2 the ~~resort~~ luxury tax area district."

3

4 **Section 22.** Section 7-6-1543, MCA, is amended to read:

5 **"7-6-1543. Resort Luxury tax area district to be governed by board -- composition -- qualifications**  
 6 **-- term of office.** (1) The board is the governing body of the ~~resort~~ luxury tax area district and is composed of  
 7 five members, to be elected as provided in 7-6-1544.

8 (2) To qualify for the board, a person must be a resident of the ~~resort~~ luxury tax area district.

9 (3) Directors shall serve for a term of 4 years from the date of their election, except, of the directors  
 10 elected at the first regular election, three directors shall serve for a term of 2 years and two shall serve for a term  
 11 of 4 years.

12 (4) At the first meeting of the board, the directors shall determine by lot which of them shall serve the  
 13 terms less than 4 years. Each succeeding term is 4 years."

14

15 **Section 23.** Section 7-6-1544, MCA, is amended to read:

16 **"7-6-1544. Resort Luxury tax area district board -- election -- term.** (1) The first election of the board  
 17 must be held at the next regular, primary, or school election immediately succeeding the creation of the ~~resort~~  
 18 luxury tax area district. Each succeeding election must be held every 2 years to coincide with the election for local  
 19 government officials as provided in 13-1-104(2).

20 (2) A petition of nomination, signed by at least five electors from within the ~~resort~~ luxury tax area district,  
 21 may be filed with the election administrator in any county containing a portion of the ~~resort~~ luxury tax area district.  
 22 A nominating petition must be filed between 135 days and 75 days before the election.

23 (3) (a) If the number of candidates filing a petition is insufficient to complete board membership, the  
 24 existing board shall appoint as many members as are needed to complete the five-member board.

25 (b) An appointee to the board must be elected by a majority of those voting at the election conducted  
 26 under 13-1-104 immediately following the appointment. If an appointee does not receive a majority of votes cast  
 27 in the election, the appointee's term expires, and the board shall initiate the process described in this subsection

28 (3).

29 (c) The term of a ~~resort~~ luxury tax area district board member appointed and subsequently elected under  
 30 the provisions of this subsection (3) is 4 years."

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**Section 24.** Section 7-6-1545, MCA, is amended to read:

**"7-6-1545. Resort Luxury tax area district board election -- canvass of vote.** (1) The board of county commissioners shall canvass the returns of the first election of the board. After the first election and canvass, the board shall meet as a canvassing board for resort luxury tax area district elections and shall canvass the returns within 4 days after any resort luxury tax area district election.

(2) If the resort luxury tax area district lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of the resort luxury tax area district shall canvass the returns of the first election."

**Section 25.** Section 7-6-1546, MCA, is amended to read:

**"7-6-1546. Resort Luxury tax area district board -- vacancy.** (1) If a vacancy on the board occurs by death, resignation, or removal from the resort luxury tax area district, the remaining directors shall appoint a director to fill the vacancy. The term of the appointment coincides with the term that became vacant.

(2) An appointee to the board must be elected by a majority of those voting at the election conducted under 13-1-104 immediately following the appointment. If an appointee does not receive a majority of the votes cast in the election, the appointee's term expires and the board shall initiate the process to fill the vacancy as provided in subsection (1)."

**Section 26.** Section 7-6-1548, MCA, is amended to read:

**"7-6-1548. Referendum to dissolve resort luxury tax area district.** (1) Upon receipt of a petition to dissolve the resort luxury tax area district, signed by more than 50% of the electors of the resort luxury tax area district, the board shall set a date for a public hearing on dissolution of the resort luxury tax area district. The hearing date may not be fewer than 45 days or more than 60 days after the date on which the board schedules the date of the hearing. A notice of the public hearing on dissolution must be published as provided in 7-1-2121. The published notice must include notice to creditors of the resort luxury tax area district to present claims owed by the resort luxury tax area district to the board prior to the date set for the dissolution hearing.

(2) After the hearing, the board shall submit the question of the resort luxury tax area district's dissolution to a vote of the electors."

1           **Section 27.** Section 7-6-1549, MCA, is amended to read:

2           **"7-6-1549. Conduct of election on question of dissolving resort luxury tax area district --**  
 3 **qualification of electors.** (1) The election on the question of dissolving the ~~resort~~ luxury tax area district must  
 4 be conducted as provided by Title 13 with respect to general and school elections, except as otherwise provided  
 5 by 7-6-1531 through ~~7-6-1550~~ 7-6-1551.

6           (2) The qualifications for electors described in 7-6-1538 apply for electors on the question of dissolution."  
 7

8           **Section 28.** Section 7-6-1550, MCA, is amended to read:

9           **"7-6-1550. Resolution dissolving resort luxury area district upon favorable vote.** (1) If a majority  
 10 of the votes cast on the question of dissolving the ~~resort~~ luxury tax area district are in favor of dissolving the ~~resort~~  
 11 luxury tax area district, the board of county commissioners shall enter into its minutes an order, by resolution,  
 12 dissolving the ~~resort~~ luxury tax area district. The resolution must contain, explicitly or by reference, an orderly plan  
 13 of dissolution.

14           (2) Immediately following adoption of the resolution dissolving the ~~resort~~ luxury tax area district, the board  
 15 of county commissioners shall file with the secretary of state and the county clerk and recorder a copy of the  
 16 resolution.

17           (3) The ~~resort~~ luxury tax area district is dissolved as provided in the plan of dissolution."  
 18

19           **Section 29.** Section 7-6-1551, MCA, is amended to read:

20           **"7-6-1551. Annexation of property into resort luxury tax area district.** (1) Property may be annexed  
 21 into a ~~resort~~ luxury tax area district as provided in this section.

22           (2) The ~~resort~~ luxury tax area district board may recommend that property contiguous to an existing  
 23 ~~resort~~ luxury tax area district be annexed into the ~~resort~~ luxury tax area district.

24           (3) If the board recommends annexation, the board shall submit its recommendation to the board of  
 25 county commissioners, along with a description or map of the existing district and a description or map of the area  
 26 proposed to be annexed.

27           ~~(4) (a) Upon receipt of the resort area district board's recommendation, the board of county~~  
 28 ~~commissioners shall submit the description or map of the existing district and the description or map of the area~~  
 29 ~~proposed to be annexed into the resort area district to the department of commerce, along with a review fee of~~  
 30 ~~\$250 and any other information required by the department as necessary to determine whether the existing~~

1 ~~district with the proposed annexation qualifies as a resort area under 7-6-1501.~~

2 ~~—— (b) The department of commerce shall determine whether the existing district with the proposed~~  
 3 ~~annexation qualifies as a resort area under 7-6-1501 and shall notify the board of county commissioners of its~~  
 4 ~~determination. If the existing district with the proposed annexation does not qualify as a resort area, the board~~  
 5 ~~of county commissioners may take no further action on the proposed annexation for a period of at least 1 year.~~  
 6 ~~If the existing district with the proposed annexation does qualify as a resort area, the board of county~~  
 7 ~~commissioners shall give notice of an election to be held in the area proposed to be annexed.~~

8 ~~(5)(4)~~ The board of county commissioners shall give notice of the election to be held in the area  
 9 proposed to be annexed. The election must be held in conjunction with a regular or primary election and must  
 10 be conducted as provided in 7-6-1537.

11 ~~(6)(5)~~ A person is not entitled to vote at an election on the proposed annexation unless the person  
 12 possesses all of the qualifications required of electors under the general election laws of this state and is a  
 13 resident of the area proposed to be annexed.

14 ~~(7)(6)~~ If a majority of the votes cast on the question of annexation of the property into the ~~resort~~ luxury  
 15 tax area district are in favor of the annexation, the board of county commissioners shall enter into its minutes an  
 16 order, by resolution, annexing the property into the district and shall cause to be created a map of the district that  
 17 includes the annexed area. Immediately following the adoption of the resolution, the board of county  
 18 commissioners shall file with the secretary of state and the county clerk and recorder a copy of the resolution and  
 19 the map.

20 ~~(8)(7)~~ The secretary of state shall issue a certificate of incorporation as provided in 7-6-1540.

21 ~~(9)(8)~~ The ~~resort~~ luxury tax area district board that governed the district before annexation shall continue  
 22 to operate, and the members shall continue to serve the members' terms. Upon occurrence of a vacancy or the  
 23 expiration of a member's term, residents of the area that has been annexed are eligible for election or  
 24 appointment to the board under the provisions of 7-6-1543 through 7-6-1546.

25 ~~(10)(9)~~ If the area proposed to be annexed includes property in more than one county, the boards of  
 26 county commissioners of each county shall comply with the provisions of this section."

27

28 **Section 30.** Section 7-7-4424, MCA, is amended to read:

29 **"7-7-4424. Undertakings to be self-supporting.** (1) (a) Except as provided in subsections (1)(b) and  
 30 (1)(c), the governing body of a municipality issuing bonds pursuant to this part shall prescribe and collect

1 reasonable rates, fees, or charges for the services, facilities, and commodities of the undertaking and shall revise  
2 the rates, fees, or charges from time to time whenever necessary so that the undertaking is and remains  
3 self-supporting.

4 (b) The property taxes specifically authorized to be levied for the general purpose served by an  
5 undertaking or ~~resort~~ luxury taxes approved, levied, and appropriated to an undertaking in compliance with  
6 7-6-1501 through 7-6-1509 constitute revenue of the undertaking and may not result in an undertaking being  
7 considered not self-supporting.

8 (c) Revenue from assessments and fees enacted by local ordinance constitutes revenue of the  
9 undertaking and may not result in an undertaking being considered not self-supporting.

10 (2) The rates, fees, or charges prescribed, along with any appropriated property or ~~resort~~ luxury tax  
11 collections, must produce revenue at least sufficient to:

12 (a) pay when due all bonds and interest on the bonds for the payment of which the revenue has been  
13 pledged, charged, or otherwise encumbered, including reserves for the bonds; and

14 (b) provide for all expenses of operation and maintenance of the undertaking, including reserves."  
15

16 **Section 31.** Section 7-7-4428, MCA, is amended to read:

17 **"7-7-4428. Covenants in resolution authorizing issuance of bonds.** Any resolution or resolutions  
18 authorizing the issuance of bonds under this part may contain covenants as to:

19 (1) the purpose or purposes to which the proceeds of sale of the bonds may be applied and the  
20 disposition of the proceeds;

21 (2) the use and disposition of the revenue of the undertaking for which the bonds are to be issued,  
22 including the creation and maintenance of reserves and including the pledge or appropriation of all or a portion  
23 of the property and ~~resort~~ luxury tax revenue referred to in 7-7-4424;

24 (3) the transfer, from the general fund of the municipality to the account or accounts of the undertaking,  
25 of an amount equal to the cost of furnishing the municipality or any of its departments, boards, or agencies with  
26 the services, facilities, or commodities of the undertaking;

27 (4) the issuance of other or additional bonds payable from the revenue of the undertaking;

28 (5) the operation and maintenance of the undertaking;

29 (6) the insurance to be carried on the undertaking and the use and disposition of insurance money;

30 (7) books of account and the inspection and audit of the books; and

1 (8) the terms and conditions upon which the holders or trustees of the bonds or any proportion of the  
 2 bonds are entitled to the appointment of a receiver by the district court having jurisdiction. The receiver may:  
 3 (a) enter and take possession of the undertaking;  
 4 (b) operate and maintain the undertaking;  
 5 (c) prescribe rates, fees, or charges, subject to the approval of the public service commission; and  
 6 (d) collect, receive, and apply all revenue thereafter arising from the undertaking in the same manner  
 7 as the municipality itself might do."  
 8

9 **Section 32.** Section 7-11-1002, MCA, is amended to read:

10 **"7-11-1002. Definitions.** As used in this part, the following definitions apply:

11 (1) "Governing body" means the legislative authority of a local government.  
 12 (2) "Local government" means a city, town, county, or consolidated city-county government or any  
 13 combination of these acting jointly.

14 (3) (a) "Special district" means a unit of local government that is authorized by law to perform a single  
 15 function or a limited number of functions.

16 (b) The term includes but is not limited to cemetery districts, museum districts, park districts, fair districts,  
 17 solid waste districts, local improvement districts, mosquito control districts, multijurisdictional districts, road  
 18 districts, rodent control districts, television districts, and districts created for any public or governmental purpose  
 19 not specifically prohibited by law. The term also includes any district or other entity formed to perform a single  
 20 or limited number of functions by interlocal agreement.

21 (c) The term does not include business improvement districts, cattle protective districts, conservancy  
 22 districts, conservation districts, water and sewer districts, planning and zoning districts, drainage districts, grazing  
 23 districts, hospital districts, irrigation districts, library districts, livestock protective committees, luxury tax area  
 24 districts, parking districts, ~~resort area districts~~, rural improvement districts, special improvement districts, lighting  
 25 districts, rural fire districts, street maintenance districts, tax increment financing districts, urban transportation  
 26 districts, water conservation and flood control projects, and weed management districts."  
 27

28 **Section 33.** Section 15-65-101, MCA, is amended to read:

29 **"15-65-101. Definitions.** For purposes of this part, the following definitions apply:

30 (1) "Accommodation charge" means the fee charged by the owner or operator of a facility for use of the

1 facility for lodging, including bath house facilities, but excluding charges for meals, transportation, entertainment,  
2 or any other similar charges.

3 (2) (a) "Campground" means a place, publicly or privately owned, used for public camping where  
4 persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

5 (b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended  
6 for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or  
7 more.

8 (3) "Council" means the tourism advisory council established in 2-15-1816.

9 (4) (a) "Facility" means a building containing individual sleeping rooms or suites, providing overnight  
10 lodging facilities for periods of less than 30 days to the general public for compensation. The term includes a  
11 facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch,  
12 guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

13 (b) The term does not include any health care facility, as defined in 50-5-101, any facility owned by a  
14 corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under the age of 18 years  
15 for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average  
16 daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under  
17 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented  
18 solely on a monthly basis or for a period of 30 days or more.

19 (5) "Luxury tax area" means an area established pursuant to 7-6-1508.

20 (6) "Luxury tax area district" has the meaning provided in 7-6-1531.

21 ~~(5)(7)~~ "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under  
22 Montana law and recognized by a majority of the governing body in the city, consolidated city-county, ~~resort~~ luxury  
23 tax area, or ~~resort~~ luxury tax area district in which the bureau is located.

24 ~~(6)(8)~~ "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana  
25 law and recognized by the council as the entity for promoting tourism within one of several regions established  
26 by executive order of the governor.

27 ~~(7) "Resort area" means an area established pursuant to 7-6-1508:~~

28 ~~(8) "Resort area district" has the meaning provided in 7-6-1531."~~

29

30 **Section 34.** Section 15-65-121, MCA, is amended to read:

1           **"15-65-121. Distribution of tax proceeds.** (1) The proceeds of the tax imposed by 15-65-111 must,  
2 in accordance with the provisions of 17-2-124, be deposited in an account in the state special revenue fund to  
3 the credit of the department. The department may spend from that account in accordance with an expenditure  
4 appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of  
5 the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 17-2-124 and as  
6 provided in subsections (2)(a) through (2)(f) of this section, the department shall determine the expenditures by  
7 state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds  
8 received each reporting period. The department shall distribute the portion of the 4% that was paid with federal  
9 funds to the agency that made the in-state lodging expenditure and deposit 30% of the amount deducted less  
10 the portion paid with federal funds in the state general fund. The amount of \$400,000 each year must be  
11 deposited in the Montana heritage preservation and development account provided for in 22-3-1004.

12           (2) The balance of the tax proceeds received each reporting period and not deducted pursuant to the  
13 expenditure appropriation, deposited in the state general fund, distributed to agencies that paid the tax with  
14 federal funds, or deposited in the heritage preservation and development account must be transferred to an  
15 account in the state special revenue fund to the credit of the department of commerce for tourism promotion and  
16 promotion of the state as a location for the production of motion pictures and television commercials, to the  
17 Montana historical interpretation state special revenue account, to the Montana historical society, to the university  
18 system, and to the department of fish, wildlife, and parks, as follows:

19           (a) 1% to the Montana historical society to be used for the installation or maintenance of roadside  
20 historical signs and historic sites;

21           (b) 2.5% to the university system for the establishment and maintenance of a Montana travel research  
22 program;

23           (c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that  
24 have both resident and nonresident use;

25           (d) 64.9% to be used directly by the department of commerce;

26           (e) (i) except as provided in subsection (2)(e)(ii), 22.5% to be distributed by the department to regional  
27 nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds  
28 collected statewide; and

29           (ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, ~~resort~~  
30 luxury tax area, or ~~resort~~ luxury tax area district exceeds \$35,000, 50% of the amount available for distribution

1 to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, ~~resort~~ luxury  
 2 tax area, or ~~resort~~ luxury tax area district is located, to be distributed to the nonprofit convention and visitors  
 3 bureau in that city, consolidated city-county, ~~resort~~ luxury tax area, or ~~resort~~ luxury tax area district; and

4 (f) 2.6% to the Montana historical interpretation state special revenue account established in 22-3-115.

5 (3) If a city, consolidated city-county, ~~resort~~ luxury tax area, or ~~resort~~ luxury tax area district qualifies  
 6 under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and  
 7 gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the  
 8 regional nonprofit tourism corporation in the region in which the city, consolidated city-county, ~~resort~~ luxury tax  
 9 area, or ~~resort~~ luxury tax area district is located.

10 (4) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing  
 11 plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation  
 12 may be used by the department of commerce for tourism promotion and promotion of the state as a location for  
 13 the production of motion pictures and television commercials.

14 (5) The tax proceeds received that are transferred to a state special revenue account pursuant to  
 15 subsections (2)(a) through (2)(e) are statutorily appropriated to the entities as provided in 17-7-502.

16 (6) The tax proceeds received that are transferred to the Montana historical interpretation state special  
 17 revenue account pursuant to subsection (2)(f) are subject to appropriation by the legislature."  
 18

19 **Section 35.** Section 15-65-122, MCA, is amended to read:

20 **"15-65-122. Qualification of nonprofit entities for receipt of funds -- limitation on administrative**  
 21 **costs.** (1) The department of revenue shall provide the council with quarterly reports of regional tax proceeds  
 22 and tax proceeds of cities, consolidated city-counties, ~~resort~~ luxury tax areas, and ~~resort~~ luxury tax area districts  
 23 that qualify for disbursement of funds under 15-65-121.

24 (2) Funds may not be disbursed to a regional nonprofit tourism corporation or nonprofit convention and  
 25 visitors bureau until that entity has submitted an annual marketing plan to the council and that plan has been  
 26 approved by the council.

27 (3) A maximum of 20% of the funds received by a regional nonprofit tourism corporation or nonprofit  
 28 convention and visitors bureau may be used for administrative purposes as defined by the council."  
 29

30 **Section 36.** Section 16-4-420, MCA, is amended to read:

1           **"16-4-420. Restaurant beer and wine license.** (1) The department shall issue a restaurant beer and  
2 wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the  
3 requirements of this section, meets the following qualifications and conditions:

4           (a) the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises  
5 consumption license;

6           (b) the applicant operates a restaurant at the location where the restaurant beer and wine license will  
7 be used or satisfies the department that:

8           (i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and  
9 intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of  
10 operation is expected to be the result of the sale of food;

11           (ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the  
12 restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be  
13 stated on the food bill; and

14           (iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department  
15 by rule;

16           (c) the applicant understands and acknowledges in writing on the application that this license prohibits  
17 the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines  
18 and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine  
19 license will be used, the activity must be discontinued or the machines must be removed before the restaurant  
20 beer and wine license takes effect; and

21           (d) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current  
22 seating capacity if the restaurant is operating.

23           (2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic  
24 beverage may not be considered for a restaurant beer and wine license at the same location.

25           (b) (i) An on-premises retail licensee who sells the licensee's existing retail license may not apply for a  
26 license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

27           (ii) A person, including an individual, with an ownership interest in an existing on-premises retail license  
28 that is being transferred to a new purchaser may not attain an ownership interest in a license applied for under  
29 this section for a period of 1 year from the date that the existing on-premises retail license is transferred to a new  
30 purchaser.

- 1 (3) A completed application for a license under this section and the appropriate application fee, as  
2 provided in subsection (11), must be submitted to the department. The department shall investigate the items  
3 relating to the application as described in subsections (3)(a) through (3)(d). Based on the results of the  
4 investigation and the exercise of its sound discretion, the department shall determine whether:
- 5 (a) the applicant is qualified to receive a license;
- 6 (b) the applicant's premises are suitable for the carrying on of the business;
- 7 (c) the requirements of this code and the rules promulgated by the department are complied with; and
- 8 (d) the seating capacity stated on the application is correct.
- 9 (4) An application for a beer and wine license submitted under this section is subject to the provisions  
10 of 16-4-203, 16-4-207, and 16-4-405.
- 11 (5) If a premises proposed for licensing under this section is a new or remodeled structure, then the  
12 department may issue a conditional license prior to completion of the premises based on reasonable evidence,  
13 including a statement from the applicant's architect or contractor confirming that the seating capacity stated on  
14 the application is correct, that the premises will be suitable for the carrying on of business as a bona fide  
15 restaurant, as defined in subsection (6).
- 16 (6) (a) For purposes of this section, "restaurant" means a public eating place:
- 17 (i) where individually priced meals are prepared and served for on-premises consumption;
- 18 (ii) where at least 65% of the restaurant's annual gross income from the operation must be from the sale  
19 of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file  
20 with the department a statement, in a form approved by the department, attesting that at least 65% of the gross  
21 income of the restaurant during the prior year resulted from the sale of food.
- 22 (iii) that has a dining room, a kitchen, and the number and kinds of employees necessary for the  
23 preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use  
24 as a full-service restaurant; and
- 25 (iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the  
26 hours of 5 p.m. and 11 p.m. The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to a  
27 restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals  
28 of that license.
- 29 (b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a  
30 majority of its food and drink in throw-away containers not reused in the same restaurant.

1 (7) (a) A restaurant beer and wine license may be transferred, upon approval by the department, from  
2 the original applicant to a new owner of the restaurant only after 1 year of use by the original owner.

3 (b) A license issued under this section may be jointly owned, and the license may pass to the surviving  
4 joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person  
5 or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property  
6 upon the death of the owner in this state or in another state.

7 (c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of  
8 the department, transfer a restaurant beer and wine license to a new owner.

9 (8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

10 (i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of  
11 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer  
12 and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may  
13 be issued in that quota area pursuant to 16-4-105;

14 (ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the quota  
15 area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota  
16 area is equal to or less than 160% of the number of beer licenses that may be issued in that quota area pursuant  
17 to 16-4-105;

18 (iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota  
19 area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota  
20 area is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant  
21 to 16-4-105; and

22 (iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota  
23 area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota  
24 area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant  
25 to 16-4-105; ~~and~~

26 ~~—— (v) for a restaurant located in a quota area that is also a resort community, as the resort community is~~  
27 ~~designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses~~  
28 ~~issued in the quota area that is also a resort community is equal to or less than 200% of the number of beer~~  
29 ~~licenses that may be issued in that quota area pursuant to 16-4-105.~~

30 (b) In determining the number of restaurant beer and wine licenses that may be issued under this

1 subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(v), the  
2 department shall round to the nearer whole number.

3 (c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota  
4 area under subsection (8)(a)(i), there must be a one-time adjustment of four additional licenses for that quota  
5 area.

6 (d) If there are more applicants than licenses available in a quota area, then the license must be awarded  
7 by lottery as provided in subsection (9).

8 (9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses  
9 under this section or as the result of an increase in the population in the quota area, the nonrenewal of a  
10 restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department  
11 shall advertise the availability of the license in the quota area for which it is available. If there are more applicants  
12 than number of licenses available, the license must be awarded to an applicant by a lottery.

13 (b) A preference must be given to an applicant who does not yet have in any quota area a restaurant  
14 beer and wine license or a retail beer license and who operates a restaurant that is in the quota area described  
15 in subsection (8) in which the license has become available and that meets the qualifications of subsection (6)  
16 for at least 12 months prior to the filing of an application. An applicant with a preference must be awarded a  
17 license before any applicant without a preference.

18 (c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will  
19 be required to submit a completed application and a one-time required fee. An applicant's ranking may not be  
20 sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the  
21 intended license advertised by the department or to the number of licenses determined under subsection (8)  
22 when there are more applicants than licenses available. The applicant's qualifications for any other restaurant  
23 beer and wine license awarded by lottery must be determined at the time of the lottery.

24 (d) If a successful lottery applicant does not use a license within 1 year of notification by the department  
25 of license eligibility, the applicant shall forfeit the license. The department shall refund any fees paid except the  
26 application fee and offer the license to the next eligible ranked applicant in the lottery.

27 (10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises  
28 consumption.

29 (11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20%  
30 of the initial licensing fee. If the department does not make a decision either granting or denying the license within

1 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate  
2 of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that  
3 the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the  
4 department denies an application, the application fee, plus any interest, less a processing fee established by rule,  
5 must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial  
6 licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

7 (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or less;

8 (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

9 (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

10 (12) The annual fee for a restaurant beer and wine license is \$400.

11 (13) If a restaurant licensed under this part increases the stated seating capacity of the licensed  
12 restaurant or if the department determines that a licensee has increased the stated seating capacity of the  
13 licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time  
14 of filing the original application and issuance of a license and the applicable fees for the additional seating.

15 (14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101  
16 persons or more may not exceed 25% of the total licenses issued.

17 (15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming  
18 or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a  
19 restaurant beer and wine license."

20

21 **NEW SECTION. Section 37. Transition.** [This act] does not affect resort taxes levied and resort  
22 communities or resort areas created before [the effective date of this act]. Resort communities and resort areas  
23 must continue to levy resort taxes in effect before [the effective date of this act] until repealed or terminated  
24 pursuant to 7-6-1504.

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