

SENATE BILL NO. 353
INTRODUCED BY J. BOHLINGER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO TOURISM AND TOURISM PROMOTION; PROVIDING FOR THE ENHANCEMENT OF STATE PARKS; PROVIDING FOR LOCAL COMMUNITY TOURISM-RELATED PROJECTS; PROVIDING FOR THE ENHANCEMENT OF CONTROLLED-ACCESS REST AREA FACILITIES; ALLOWING CERTAIN LOCAL ORGANIZATIONS TO CONSTRUCT AND OPERATE TOURIST INFORMATION CENTERS AT REST AREAS; ESTABLISHING A HIGHWAY REST AREA IMPROVEMENT ACCOUNT; ESTABLISHING A 9 PERCENT RENTAL VEHICLE TAX; PROVIDING DEFINITIONS; PROVIDING FOR THE ADMINISTRATION OF THE RENTAL VEHICLE TAX AND PROVIDING FOR PENALTIES AND INTEREST; REQUIRING THAT A RENTAL VEHICLE OWNER OR OPERATOR REGISTER WITH THE DEPARTMENT OF REVENUE; ALLOWING A RENTAL VEHICLE OWNER OR OPERATOR TO RETAIN 2 PERCENT OF THE TAX FOR ADMINISTERING THE COLLECTION OF THE TAX; PROVIDING FOR THE DISTRIBUTION OF THE RENTAL VEHICLE TAX TO THE HIGHWAY REST AREA IMPROVEMENT ACCOUNT FOR REST AREA ENHANCEMENT AND GRANTS FOR TOURIST INFORMATION CENTERS; INCREASING THE LODGING FACILITY USE TAX RATE FROM 4 PERCENT TO 9 PERCENT; REVISING THE DISTRIBUTION OF THE LODGING FACILITY USE TAX; PROVIDING THAT A PORTION OF THE INCREASED LODGING FACILITY USE TAX BE CREDITED TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR STATE PARKS; PROVIDING THAT A PORTION OF THE INCREASED LODGING FACILITY USE TAX BE CREDITED TO THE DEPARTMENT OF COMMERCE TO PROVIDE GRANTS FOR LOCAL COMMUNITY TOURISM-RELATED INFRASTRUCTURE AND PROMOTION PROJECTS; AMENDING SECTIONS 15-65-111, 15-65-121, AND 60-5-110, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Highway rest area improvement account.** (1) There is a highway rest area improvement account in the state special revenue fund established in 17-2-102.

(2) There must be deposited in the highway rest area improvement account the proceeds from the rental vehicle tax as provided in [section 3].

(3) The money in the highway rest area improvement account must be allocated to the department as

follows:

(a) 70% for the development, improvement, and maintenance of controlled-access rest area facilities on publicly owned or leased rights-of-way of controlled-access highways; and

(b) 30% for a grant program to assist regional nonprofit tourism corporations or local nonprofit organizations to construct and operate tourist information centers in safety rest areas as provided in 60-5-110. The department shall adopt rules and establish procedures for awarding grants under this subsection (3)(b).

NEW SECTION. Section 2. Definitions. As used in [sections 2 through 7], the following definitions apply:

(1) (a) "Gross receipts" means all receipts from sources within the state, whether in money or other consideration, received from engaging in the business of renting rental vehicles.

(b) The term does not include the amount received for motor fuel or insurance.

(2) "Rental vehicle" means a light vehicle as defined in 61-1-139 that:

(a) is rented for a period of not more than 30 days;

(b) is rented without a driver; and

(c) is designed to transport 10 or fewer passengers.

(3) "Rental vehicle owner or operator" means a person who owns or leases rental vehicles and who rents or offers to rent the rental vehicles.

NEW SECTION. Section 3. Rate of rental vehicle tax -- exception -- collection and reporting -- allowance -- distribution. (1) (a) Except as provided in subsection (1)(b), there is imposed a tax on rental vehicles. The tax is 9% of the base rental charge, exclusive of insurance, as stated in the rental contract. The tax must be stated in the rental contract and collected in accordance with the terms of the contract.

(b) The tax imposed by this section does not apply to the base rental charge for rental vehicles rented pursuant to a contract for insurance.

(2) The rental vehicle owner or operator shall report to the department, at the end of each calendar quarter, the gross receipts actually collected during that quarter attributable to the rental contracts. The report must be on a form provided by the department. The report is due on or before the last day of the month following the end of the calendar quarter and must be accompanied by a payment in an amount equal to 98% of the tax required to be collected under subsection (1). Subject to [section 5(7)], the remaining 2% of the amount of the tax may be retained by the rental vehicle owner or operator as an administrative allowance for collection of the

tax. To retain 2% of the tax, the rental vehicle owner or operator shall submit the report with payment of the tax to the department on or before the due date.

(3) The department shall, in accordance with the provisions of 15-1-501, credit the proceeds of the tax to the highway rest area improvement account established in [section 1].

NEW SECTION. Section 4. Registration -- place of business. (1) Each rental vehicle owner or operator who is required to file a report under [section 3] is required to register with the department. If the rental vehicle owner or operator has more than one location in which the rental vehicle owner or operator maintains an office or other place of business, the registration may include multiple locations.

(2) Each registration must be on a form prescribed by the department and must set forth the name under which the registrant intends to transact business, the location of the registrant's place or places of business, and other information that the department may require. The registration must be filed by the rental vehicle owner or operator if the owner or operator is an individual, by a member or partner if the owner or operator is an association or partnership, or by an individual authorized to sign the registration if the owner or operator is a corporation.

(3) A rental vehicle owner or operator who fails to comply with this section is subject to a fine of not less than \$100.

NEW SECTION. Section 5. Audits -- records. (1) The department may audit the books and records of a rental vehicle owner or operator to ensure that the proper amount of the tax imposed by [section 3] has been collected. An audit may be done on the premises of the rental vehicle owner or operator or at any other convenient location.

(2) The department may request the rental vehicle owner or operator to provide the department with books, ledgers, registers, or other documents necessary to verify the correct amount of the tax.

(3) The rental vehicle owner or operator shall maintain and have available for inspection by the department books, ledgers, registers, or other documents showing the collection of the rental vehicle tax for the preceding 5 years.

(4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent report violating the provisions of [sections 2 through 7], the amount of tax due under any report must be determined by the department within 5 years after the return is made. After 5 years, the department is barred from revising any report or recomputing the tax due, and a proceeding in court for the collection of the tax may

not be instituted unless notice of any additional tax is provided within the 5-year period.

(5) An application for revision of the amount of tax paid may be filed with the department by a rental vehicle owner or operator within 5 years from the original due date of the report.

(6) If the department determines that the amount of tax due is different from the amount reported, the amount of the tax computed on the basis of the audit conducted pursuant to this section constitutes the tax to be paid.

(7) If the tax due exceeds the amount of tax reported as due on the tax return of the rental vehicle owner or operator, the owner or operator is not entitled to retain 2% of the amount of the tax.

NEW SECTION. Section 6. Penalty and interest for failure to file or pay. (1) A rental vehicle owner or operator who fails to file the report as required by [section 3] must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

(2) A rental vehicle owner or operator who fails to make payment or fails to report and make payment as required by [section 3] must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) (a) If a rental vehicle owner or operator fails to file the report required by [section 3] or if the department determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the owner or operator. The provisions of 15-1-211 apply to any assessment by the department. The taxpayer may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the rental vehicle owner or operator. The tax is due and payable at the expiration of 30 days after the notice and demand were mailed. Interest on any deficiency assessment must be computed as provided in 15-1-216.

NEW SECTION. Section 7. Credit for overpayment -- interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the rental vehicle owner or operator and the balance must be refunded to the owner or operator, to the owner's or operator's successor through reorganization, merger, or consolidation, or to the owner's or operator's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate that is charged on unpaid taxes as provided in 15-1-216 from the due date of the return or from the date of overpayment,

whichever is later, to the date that the department approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during a period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the rental vehicle owner or operator to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by [sections 2 through 7] is considered an overpayment with respect to which interest is allowable.

Section 8. Section 15-65-111, MCA, is amended to read:

"15-65-111. Tax rate. (1) There is imposed on the user of a facility a tax at a rate equal to ~~4%~~ 9% of the accommodation charge collected by the facility.

(2) Accommodation charges do not include charges for rooms used for purposes other than lodging."

Section 9. Section 15-65-121, MCA, is amended to read:

"15-65-121. (Temporary) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through ~~(1)(e)~~ (1)(f) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct ~~4%~~ 9% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of \$400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. For the fiscal year ending June 30, 2003, the amount of \$1.7 million must be deposited in the state general fund. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state lodging expenditures were paid by

state agencies, or deposited in the heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion, ~~and promotion of the state as a location for the production of motion pictures and television commercials, and local community tourism-related infrastructure and promotion,~~ to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) ~~4%~~ 0.45% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) ~~2.5%~~ 1.1% to the university system for the establishment and maintenance of a Montana travel research program;

(c) ~~6.5%~~ 31.75% to the department of fish, wildlife, and parks for the maintenance and, subject to 23-1-126, development and improvement of facilities in state parks that have both resident and nonresident use;

(d) ~~67.5%~~ 30% to be used directly by the department of commerce, ~~except as provided in section 1, Chapter 11, Special Laws of August 2002~~ for tourism promotion, and for promotion of the state as a location for the production of motion pictures and television commercials; and

(e) 26.7% to the department of commerce to implement a grant program to assist local governments and nonprofit groups in the planning, design, and construction or development of tourism-related infrastructure and tourism-related promotion; and

~~(e)(f)~~ (i) except as provided in subsection ~~(1)(e)(ii)~~ (1)(f)(ii), ~~22.5%~~ 10% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if ~~22.5%~~ 10% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

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

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials. (Terminates July 1, 2007--sec. 3, Ch. 469, L. 2001.)

15-65-121. (Effective July 1, 2007) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through ~~(1)(e)~~ (1)(f) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct ~~4%~~ 9% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion, ~~and~~ promotion of the state as a location for the production of motion pictures and television commercials, and local community tourism-related infrastructure and promotion, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) ~~4%~~ 0.45% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) ~~2.5%~~ 1.1% to the university system for the establishment and maintenance of a Montana travel research program;

(c) ~~6.5%~~ 31.75% to the department of fish, wildlife, and parks for the maintenance and, subject to 23-1-126, development and improvement of facilities in state parks that have both resident and nonresident use;

(d) ~~67.5%~~ 30% to be used directly by the department of commerce for tourism promotion, and promotion of the state as a location for the production of motion pictures and television commercials; and

(e) 26.7% to the department of commerce to implement a grant program to assist local governments and nonprofit groups in the planning, design, and development of tourism-related infrastructure and tourism-related promotion; and

~~(e)(f)~~ (i) except as provided in subsection ~~(1)(e)(ii)~~ (1)(f)(ii), ~~22.5%~~ 10% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if ~~22.5%~~ 10% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

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

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

Section 10. Section 60-5-110, MCA, is amended to read:

"60-5-110. Commercial enterprise or structure prohibited -- ~~exception exceptions.~~ (1) Except as provided in 60-5-505 and subsection (2) of this section, no a commercial enterprise or structure shall may not be constructed or operated on the publicly owned right-of-way of a controlled-access highway or facility or on any publicly leased land used in connection therewith with the highway or facility.

(2) (a) A regional nonprofit tourism corporation or a local nonprofit organization that has as one of its primary functions the promotion of state and local tourism may construct and operate tourist information centers in safety rest areas, as defined in 75-15-103.

(b) As used in this section, "tourist information center" means a structure that is used solely for the promotion of state and local tourism, including but not limited to attractions, museums, events, recreational opportunities, and lodging and dining facilities.

(3) A regional nonprofit tourism corporation or a local nonprofit organization referred to in subsection (2) may apply for a grant for the purposes of this section under [section 1]."

NEW SECTION. **Section 11. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, and the provisions of Title 60, chapter 2, apply to [section 1].

(2) [Sections 2 through 7] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 2 through 7].

NEW SECTION. **Section 12. Effective date.** [This act] is effective July 1, 2003.

NEW SECTION. **Section 13. Applicability.** [This act] applies to accommodation charges collected and rental vehicle receipts collected after June 30, 2003.

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