

AMENDED IN SENATE JUNE 8, 2006

AMENDED IN SENATE JUNE 5, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2592

Introduced by Assembly Member Leno

February 24, 2006

An act to amend Sections 13995.20, 13995.40, 13995.49, ~~13995.53, 13995.54,~~ 13995.60, 13995.65, and 13995.77 of the Government Code, to add Sections 7061 and 19559 to the Revenue and Taxation Code, and to amend Section 1095 of the Unemployment Insurance *the* Government Code, relating to California tourism.

LEGISLATIVE COUNSEL'S DIGEST

AB 2592, as amended, Leno. California Travel and Tourism Commission.

Existing law, the California Tourism Marketing Act, provides for the California Travel and Tourism Commission, a nonprofit mutual benefit corporation, and provides for a 37-member board of the commission, including 12 members appointed by the Governor and 24 elected members. The 12 appointed members are required to represent the 12 officially designated tourism regions.

This bill would specify that each appointed member of the commission shall represent only one of those designated tourism regions. The bill would also specify that appointed members are not limited to persons who are employed by or represent assessed businesses. The bill would provide that elected commissioners shall serve 4-year terms and that an appointed or elected commissioner would cease to be a commissioner 90 days following the date on

which he or she ceases to meet the criteria for appointment or election as a commissioner, except as specified.

Existing law authorizes the commission to accept voluntary assessments from any person in a travel and tourism related business, except persons whose primary business is gaming.

This bill would delete that exception.

~~Existing law authorizes the Secretary of Business, Transportation and Housing to require assessed businesses, as defined, to maintain specified books and records, to provide requested information to the secretary, and to permit the secretary to inspect those books and records.~~

~~This bill would authorize the secretary also to require businesses that claim to be exempt from assessment to maintain certain records, to furnish information to the secretary, and to permit the secretary to inspect those books and records. The bill would also authorize the Board of Equalization, the Franchise Tax Board, and the Employment Development Department to permit the use of information by the secretary for the purpose of identifying persons or businesses that may owe assessments. The bill would make it a misdemeanor for persons associated with the Business, Transportation and Housing Agency and the California Travel and Tourism Commission to disclose or use the information, except as provided. By creating a new crime and expanding an existing crime, the bill would impose a state-mandated local program.~~

Existing law establishes procedures for imposing assessments on businesses within various tourism industry categories or segments *by means of referendum called by the Secretary of Business, Transportation and Housing*. Existing law also exempts from assessment a small business, defined as a business location with less than \$1,000,000 in California gross annual revenue.

This bill would ~~also~~ *require the secretary to identify, if possible and provide an opportunity to vote to, businesses that would be newly assessed due to a referendum, and would set forth specified methods by which a business or person sharing common ownership, management, and control of more than one assessed business may calculate the assessment. The bill would also allow the exemption threshold amount to be lowered to not less than \$500,000 by referendum.*

~~Existing law restricts the disclosure of information obtained pursuant to the act by the Secretary of Business, Transportation and Housing.~~

~~This bill would make that restriction applicable to the Business, Transportation and Housing Agency.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13995.20 of the Government Code is
2 amended to read:

3 13995.20. Unless the context otherwise requires, the
4 definitions in this section govern the construction of this chapter.

5 (a) "Appointed commissioner" means a commissioner
6 appointed by the Governor pursuant to paragraph (2) of
7 subdivision (b) of Section 13995.40.

8 (b) "Assessed business" means a person required to pay an
9 assessment pursuant to this chapter, and until the first assessment
10 is levied, any person authorized to vote for the initial referendum.
11 An assessed business shall not include a public entity or a
12 corporation when a majority of the corporation's board of
13 directors is appointed by a public official or public entity, or
14 serves on the corporation's board of directors by virtue of being
15 elected to public office, or both.

16 (c) "Commission" means the California Travel and Tourism
17 Commission.

18 (d) "Elected commissioner" means a commissioner elected
19 pursuant to subdivision (d) of Section 13995.40.

20 (e) "Industry category" means the following classifications
21 within the tourism industry:

- 22 (1) Accommodations.
- 23 (2) Restaurants and retail.
- 24 (3) Attractions and recreation.

1 (4) Transportation and travel services.

2 (f) "Industry segment" means a portion of an industry
3 category. For example, rental cars are an industry segment of the
4 transportation and travel services industry category.

5 (g) "Office" means the Office of Tourism, also popularly
6 referred to as the Division of Tourism, within the Business,
7 Transportation and Housing Agency.

8 (h) "Person" means an individual, public entity, firm,
9 corporation, association, or any other business unit, whether
10 operating on a for-profit or nonprofit basis.

11 (i) "Referendum" means any vote by mailed ballot of
12 measures recommended by the commission and approved by the
13 secretary pursuant to Section 13995.60, except for the initial
14 referendum, which shall consist of measures contained in the
15 selection committee report, discussed in Section 13995.30.

16 (j) "Secretary" means the Secretary of Business,
17 Transportation and Housing.

18 (k) "Selection Committee" means the Tourism Selection
19 Committee described in Article 3 (commencing with Section
20 13995.30).

21 SEC. 2. Section 13995.40 of the Government Code is
22 amended to read:

23 13995.40. (a) Upon approval of the initial referendum, the
24 office shall establish a nonprofit mutual benefit corporation
25 named the California Travel and Tourism Commission. The
26 commission shall be under the direction of a board of
27 commissioners, which shall function as the board of directors for
28 purposes of the Nonprofit Corporation Law.

29 (b) The board of commissioners shall consist of 37
30 commissioners comprising the following:

31 (1) The secretary, who shall serve as chairperson.

32 (2) (A) Twelve members, who are professionally active in the
33 tourism industry, and whose primary business, trade, or
34 profession is directly related to the tourism industry, shall be
35 appointed by the Governor. Each appointed commissioner shall
36 represent only one of the 12 tourism regions designated by the
37 office, and the appointed commissioners shall be selected so as to
38 represent, to the greatest extent possible, the diverse elements of
39 the tourism industry. Appointed commissioners are not limited to

1 individuals who are employed by or represent assessed
2 businesses.

3 (B) If an appointed commissioner ceases to be professionally
4 active in the tourism industry or his or her primary business,
5 trade, or profession ceases to be directly related to the tourism
6 industry, he or she shall automatically cease to be an appointed
7 commissioner 90 days following the date on which he or she
8 ceases to meet both of the eligibility criteria specified in
9 subparagraph (A), unless the commissioner becomes eligible
10 again within that 90-day period.

11 (3) Twenty-four elected commissioners, including at least one
12 representative of a travel agency or tour operator that is an
13 assessed business.

14 (c) The commission established pursuant to Section 15364.52
15 shall be inoperative so long as the commission established
16 pursuant to this section is in existence.

17 (d) Elected commissioners shall be elected by industry
18 category in a referendum. Regardless of the number of ballots
19 received for a referendum, the nominee for each commissioner
20 slot with the most weighted votes from assessed businesses
21 within that industry category shall be elected commissioner. In
22 the event that an elected commissioner resigns, dies, or is
23 removed from office during his or her term, the commission shall
24 appoint a replacement from the same industry category that the
25 commissioner in question represented, and that commissioner
26 shall fill the remaining term of the commissioner in question. The
27 number of commissioners elected from each industry category
28 shall be determined by the weighted percentage of assessments
29 from that category.

30 (e) The secretary may remove any elected commissioner
31 following a hearing at which the commissioner is found guilty of
32 abuse of office or moral turpitude.

33 (f) (1) The term of each elected commissioner shall
34 commence July 1 of the year next following his or her election,
35 and shall expire on June 30 of the fourth year following his or her
36 election. If an elected commissioner ceases to be employed by or
37 with an assessed business in the category and segment which he
38 or she was representing, his or her term as an elected
39 commissioner shall automatically terminate 90 days following
40 the date on which he or she ceases to be so employed, unless,

1 within that 90-day period, the commissioner again is employed
2 by or with an assessed business in the same category and
3 segment.

4 (2) Terms of elected commissioners that would otherwise
5 expire effective December 31 of the year during which
6 legislation adding this subdivision is enacted shall automatically
7 be extended until June 30 of the following year.

8 (g) With the exception of the secretary, no commissioner shall
9 serve for more than two consecutive terms. For purposes of this
10 subdivision, the phrase “two consecutive terms” shall not include
11 partial terms.

12 (h) Except for the original commissioners, all commissioners
13 shall serve four-year terms. One-half of the commissioners
14 originally appointed or elected shall serve a two-year term, while
15 the remainder shall serve a four-year term. Every two years
16 thereafter, one-half of the commissioners shall be appointed or
17 elected by referendum.

18 (i) The selection committee shall determine the initial slate of
19 candidates for elected commissioners. Thereafter the
20 commissioners, by adopted resolution, shall nominate a slate of
21 candidates, and shall include any additional candidates
22 complying with the procedure described in Section 13995.62.

23 (j) The commissioners shall elect a vice chairperson from the
24 elected commissioners.

25 (k) The commission may lease space from the office.

26 (l) The commission and the office shall be the official state
27 representatives of California tourism.

28 (m) All commission meetings shall be held in California.

29 (n) No person shall receive compensation for serving as a
30 commissioner, but each commissioner shall receive
31 reimbursement for reasonable expenses incurred while on
32 authorized commission business.

33 (o) Assessed businesses shall vote only for commissioners
34 representing their industry category.

35 (p) Commissioners shall comply with the requirements of the
36 Political Reform Act of 1974 (Title 9 (commencing with Section
37 81000)). The Legislature finds and declares that commissioners
38 appointed or elected on the basis of membership in a particular
39 tourism segment are appointed or elected to represent and serve
40 the economic interests of those tourism segments and that the

1 economic interests of these members are the same as those of the
2 public generally.

3 (q) Commission meetings shall be subject to the requirements
4 of the Bagley-Keene Open Meeting Act (Article 9 (commencing
5 with Section 11120) of Chapter 1 of Part 1).

6 (r) The executive director of the commission shall serve as
7 secretary to the commission, a nonvoting position, and shall keep
8 the minutes and records of all commission meetings.

9 SEC. 3. Section 13995.49 of the Government Code is
10 amended to read:

11 13995.49. The commission may by written contract accept a
12 voluntary assessment from any person in a travel and tourism
13 related business who is not an assessed business. The contract
14 shall apply solely to the person in question and not to any other
15 person in a travel and tourism related business that is not an
16 assessed business. The contract shall provide that the voluntary
17 assessment be proportionately equivalent to the assessment that
18 would be levied if the person were an assessed business under
19 this chapter, shall permit that business to vote on any referendum
20 conducted under this chapter as if that person were an assessed
21 business, and shall have a term concurrent with the effective
22 period of any referendum on which the person votes. Individual
23 voluntary assessments under this section shall be enforceable
24 only under the terms of the respective contracts to which they
25 pertain. This section shall not be construed to preclude donations
26 to, or cooperative marketing activities of any kind with, the
27 commission on the part of any person.

28 ~~SEC. 4. Section 13995.53 of the Government Code is~~
29 ~~amended to read:~~

30 ~~13995.53. (a) The secretary may require all assessed~~
31 ~~businesses to maintain books and records that reflect their~~
32 ~~income or sales as reflected in the assessment, and to furnish the~~
33 ~~secretary with any information that may, from time to time, be~~
34 ~~requested by the secretary, and to permit the inspection by the~~
35 ~~secretary of portions of books and records that relate to the~~
36 ~~amount of assessment.~~

37 ~~(b) The secretary may also require any business that claims to~~
38 ~~be exempt from assessment pursuant to this chapter to maintain~~
39 ~~books and records that reflect its income and sales, as well as its~~
40 ~~percentage of income and sales that are tourism related, and to~~

1 furnish the secretary with any information that may, from time to
2 time, be requested by the secretary, and to permit the inspection
3 by the secretary of portions of its books and records that pertain
4 to whether the business is subject to assessment pursuant to this
5 chapter and, if so, the amount of any assessments owing.

6 ~~SEC. 5. Section 13995.54 of the Government Code is~~
7 ~~amended to read:~~

8 ~~13995.54. All information pertaining to assessed businesses~~
9 ~~obtained by the secretary or the Business, Transportation, and~~
10 ~~Housing Agency pursuant to this chapter is confidential and shall~~
11 ~~not be subject to discovery, is exempt from the California Public~~
12 ~~Records Act (Chapter 3.5 (commencing with Section 6250) of~~
13 ~~Division 7 of Title 1), and shall not be disclosed except to any~~
14 ~~attorney hired by the secretary who is employed to give legal~~
15 ~~advice upon it or by court order.~~

16 ~~SEC. 6.~~

17 ~~SEC. 4. Section 13995.60 of the Government Code is~~
18 ~~amended to read:~~

19 ~~13995.60. (a) As used in this article and Article 7~~
20 ~~(commencing with Section 13995.65), “assessment level” means~~
21 ~~the estimated gross dollar amount received by assessment from~~
22 ~~all assessed businesses on an annual basis, and “assessment~~
23 ~~formula” means the allocation method used within each industry~~
24 ~~segment (for example, percentage of gross revenue).~~

25 ~~(b) Commencing on January 1, 2003, a referendum shall be~~
26 ~~called every two years, and the commission, by adopted~~
27 ~~resolution, shall determine the slate of individuals who will run~~
28 ~~for commissioner. The resolution shall also cover, but not be~~
29 ~~limited to, the proposed assessment level, based upon specified~~
30 ~~assessment formulae, together with necessary information to~~
31 ~~enable each assessed business to determine what its individual~~
32 ~~assessment would be. Commencing with the referendum held in~~
33 ~~2007 and every six years thereafter, the resolution shall also~~
34 ~~cover the termination or continuation of the commission. The~~
35 ~~resolution may also include an amended industry segment~~
36 ~~allocation formula and the percentage allocation of assessments~~
37 ~~between industry categories and segments. The commission may~~
38 ~~specify in the resolution that a special, lower assessment rate that~~
39 ~~was set pursuant to subdivision (c) of Section 13995.30 for a~~
40 ~~particular business will no longer apply due to changes in the~~

1 unique circumstance that originally justified the lower rate. The
2 resolution may include up to three possible assessment levels,
3 from which the assessed businesses will select one assessment
4 level by plurality weighted vote.

5 (c) The commission shall deliver to the secretary the
6 resolution described in subdivision (b). The secretary shall call a
7 referendum containing the information required by subdivision
8 (b) plus any additional matters complying with the procedures of
9 subdivision (b) of Section 13995.62.

10 (d) When the secretary calls a referendum, all assessed
11 businesses shall be sent a ballot for the referendum. Every ballot
12 that the secretary receives by the ballot deadline shall be counted,
13 utilizing the weighted formula adopted initially by the selection
14 committee, and subsequently amended by referendum.

15 (e) If the referendum includes more than one possible
16 assessment rate, the rate with the plurality of weighted votes shall
17 be adopted.

18 (f) Notwithstanding any other provision of this section, if the
19 commission delivers to the secretary a resolution pertaining to
20 any matter described in subdivision (b), the secretary shall call a
21 referendum at a time or times other than as specified in this
22 section. Each referendum shall contain only those matters
23 contained in the resolution.

24 (g) Notwithstanding any other provision of this section, the
25 secretary shall identify, to the extent reasonably feasible, those
26 businesses that would become newly assessed due to a change in
27 category, segment, threshold, or exemption status sought via
28 referendum, and provide those businesses the opportunity to vote
29 in that referendum.

30 ~~SEC. 7.~~

31 *SEC. 5.* Section 13995.65 of the Government Code is
32 amended to read:

33 13995.65. (a) Each industry category shall establish a
34 committee to determine the following within its industry
35 category: industry segments, assessment formula for each
36 industry segment, and any types of business exempt from
37 assessment. The initial segment committees shall consist of the
38 subcommittee for that category as described in subdivision (d) of
39 Section 13995.30. Following approval of the assessment by
40 referendum, the committees shall be selected by the commission,

1 based upon recommendations from the tourism industry.
2 Committee members need not be commission members.

3 (b) The committee recommendations shall be presented to the
4 commission or selection committee, as applicable. The selection
5 committee may adopt a resolution specifying some or all of the
6 items listed in subdivision (a), plus an allocation of the overall
7 assessment among industry categories. The commission may
8 adopt a resolution specifying one or more of the items listed in
9 subdivision (a), plus an allocation of the proposed assessment.
10 The selection committee and commission are not required to
11 adopt the findings of any committee.

12 (c) The initial industry category and industry segment
13 allocations shall be included in the selection committee report
14 required by subdivision (b) of Section 13995.30. Changes to the
15 industry segment allocation formula may be recommended to the
16 commission by a segment committee at the biennial commission
17 meeting scheduled to approve the referendum resolution pursuant
18 to Section 13995.60. At the same meeting, the commission may
19 amend the percentage allocations among industry categories.
20 Any item discussed in this section that is approved by resolution
21 of the commission, except amendments to the percentage
22 allocations among industry categories, shall be placed on the next
23 referendum, and adopted if approved by the majority of weighted
24 votes cast.

25 (d) Upon approval by referendum, the office shall mail an
26 assessment bill to each assessed business. The secretary shall
27 determine how often assessments are collected, based upon
28 available staffing resources. The secretary may stagger the
29 assessment collection throughout the year, and charge businesses
30 a prorated amount of assessment because of the staggered
31 assessment period. The secretary and office shall not divulge the
32 amount of assessment or weighted votes of any assessed
33 businesses, except as part of an assessment action.

34 (e) An assessed business may appeal an assessment to the
35 secretary based upon the fact that the business does not meet the
36 definition established for an assessed business within its industry
37 segment or that the level of assessment is incorrect. An appeal
38 brought under this subdivision shall be supported by substantial
39 evidence submitted under penalty of perjury by affidavit or
40 declaration as provided in Section 2015.5 of the Code of Civil

1 Procedure. If the error is based upon failure of the business to
2 provide the required information in a timely manner, the
3 secretary may impose a fee for reasonable costs incurred by the
4 secretary in correcting the assessment against the business as a
5 condition of correcting the assessment.

6 (f) Notwithstanding any other provision of law, an assessed
7 business may pass on some or all of the assessment to customers.
8 An assessed business that is passing on the assessment may, but
9 shall not be required to, separately identify or itemize the
10 assessment on any document provided to a customer.
11 Assessments levied pursuant to this chapter and passed on to
12 customers are not part of gross receipts or gross revenue for any
13 purpose, including the calculation of sales or use tax and income
14 pursuant to any lease. However, assessments that are passed on
15 to customers shall be included in gross receipts for purposes of
16 income and franchise taxes.

17 (g) For purposes of calculating the assessment for a business
18 with revenue in more than one industry category or industry
19 segment, that business may elect to be assessed based on either
20 of the following:

21 (1) The assessment methodology and rate of assessment
22 applicable to each category or segment, respectively, as it relates
23 to the revenue that it derives from that category or segment.

24 (2) With respect to its total revenue from all industry
25 categories or segments, the assessment methodology and rate of
26 assessment applicable to the revenue in the category and segment
27 in which it earns the most gross revenue.

28 (h) (1) A person sharing common ownership, management, or
29 control of more than one assessed business may elect to
30 calculate, administer, and pay the assessment owed by each
31 business by any of the following methods:

32 (A) Calculated on the basis of each individual business
33 location.

34 (B) Calculated on the basis of each business, or each group of
35 businesses, possessing a single federal employer identification
36 number, regardless of the number of locations involved.

37 (C) Calculated on the basis of the average aggregate
38 percentage of tourism-related gross revenue received by all of the
39 person's businesses in a particular industry segment or industry
40 category during the period in question, multiplied by the total

1 aggregate tourism-related gross revenue received by all of the
2 businesses, and then multiplied by the appropriate assessment
3 formula. For example, if a person sharing common ownership,
4 management, or control of more than one assessed business in
5 the retail industry segment calculates that the average percentage
6 of tourism-related gross revenue received by all of its locations
7 equals 6 percent during the period in question, that person may
8 multiply all of the gross revenue received from all of those
9 locations by 6 percent, and then multiply that product by the
10 applicable assessment formula.

11 (D) Calculated on any other basis authorized by the secretary.

12 (2) Except as the secretary may otherwise authorize, the
13 methods in subparagraphs (B), (C), or (D) shall not be used if the
14 aggregate assessments paid would be less than the total
15 assessment revenues that would be paid if the method in
16 subparagraph (A) were used.

17 ~~SEC. 8.~~

18 *SEC. 6.* Section 13995.77 of the Government Code is
19 amended to read:

20 13995.77. A business is exempt from the assessments
21 provided for in this chapter if any of the following apply:

22 (a) The business is a travel agency or tour operator that derives
23 less than 20 percent of its gross revenue annually from travel and
24 tourism occurring within the state. A travel agency or tour
25 operator that qualifies for this exemption may participate as an
26 assessed business by paying an assessment calculated on the
27 same basis applicable to other travel agencies or tour operators,
28 respectively, and by filing a written request with the secretary
29 indicating its desire to be categorized as an assessed business.

30 (b) The business is a small business. For purposes of this
31 section, “small business” means a business location with less
32 than one million dollars (\$1,000,000) in total California gross
33 annual revenue from all sources. This threshold amount may be
34 lowered, but never to less than five hundred thousand dollars
35 (\$500,000), by means of a referendum conducted pursuant to
36 Section 13995.60; however, the secretary may elect to forgo
37 assessing a business for which the expense incurred in collecting
38 the assessment is not commensurate with the assessment that
39 would be collected.

1 (c) The assessments provided for in this chapter shall not
2 apply to the revenue of regular route intrastate and interstate bus
3 service: provided, however, that this subdivision shall not be
4 deemed to exclude any revenue derived from bus service that is
5 of a type that requires authority, whether in the form of a
6 certificate of public convenience and necessity, or a permit, to
7 operate as a charter-party carrier of passengers pursuant to
8 Chapter 8 (commencing with Section 5351) of Division 2 of the
9 Public Utilities Code.

10 (d) Any business exempted pursuant to this section may enter
11 into a contract for voluntary assessments pursuant to Section
12 13995.49.

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, June 5, 2006 (JR11)**