

AMENDED IN SENATE AUGUST 24, 2006

AMENDED IN SENATE AUGUST 23, 2006

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 add Section 1936.01 to the Civil Code, to amend Sections 13995.40, 13995.49, 13995.65, and 13995.77 of, to amend, repeal, and add Sections 13995.20 and 13995.60 of, and to add Sections 13995.40.5, 13995.64.5, 13995.65.5, and 13995.92 to, the Government Code, and to add Item 0520-495 to Section 2 of the Budget Act of 2006 (Chapter 47 of the Statutes of 2006, as amended by Chapter 48 of the Statutes of 2006), relating to California tourism.

LEGISLATIVE COUNSEL'S DIGEST

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

(1) 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 the Secretary of Business, Transportation and Housing, 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.

(2) 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.

(3) 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 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 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.

This bill would require the commission to submit a referendum to the passenger rental car industry as soon as possible, but not later than March 31, 2007, proposing an assessment level, as specified, upon the passenger rental car industry, as an industry category, for the 2006–07, and 2007–08 fiscal years. The bill would require the commission to report to the secretary if the referendum and assessment rates are agreed to. The bill would require the secretary to provide notice of that agreement to the Legislature and the Secretary of State and to post notice on its Internet Web site.

The bill would make other changes relating to elections of commissioners, voting rights, and assessments that would be operative only if the referendum submitted to the passenger rental car industry, and assessment rates, as specified, have been agreed to.

(4) Under existing law, a passenger vehicle rental company is required to only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, and a mileage charge, which a renter must pay to hire or lease a vehicle for the period of time to which the rental rate applies. Existing law prohibits a rental company from additionally *charging* any fee that must be paid by the renter as a condition of renting the vehicle.

This bill would require a rental company, in connection with the rental of a passenger vehicle, to only advertise a rental rate that includes the entire amount, except taxes, a customer facility charge, and a mileage charge, that a renter must pay to rent a vehicle. The bill would specify that when a rental company provides a quote or imposes a charge, it may separately state the rental rate, taxes, customer facility charge, airport concession fee tourism commission assessment, as defined, and mileage charge. The bill would require a rental company, imposing customer facility charges, airport concession fees, or tourism commission assessments, to provide the person receiving the quote with a specified good faith estimate. The bill would also require a rental company, imposing these charges and fees to clearly and conspicuously disclose, in the rental contract, the specified total for the entire rental. *The bill would authorize a renter to bring an action against a rental company for specified damages and equitable relief for a violation of these provisions.* The bill would make these provisions operative only if the referendum submitted to the passenger rental car industry, and assessment rates, as specified in (3) above, have been agreed to.

(5) The Budget Act of 2006 (Chapter 47 of the Statutes of 2006; amended by Chapter 48 of the Statutes of 2006), appropriated to the Secretary of Business, Transportation and Housing from the General Fund certain amounts for support of its operations during the 2006–07 fiscal year, and allocated \$7,300,000 of that amount for use by the California Travel and Tourism Commission for promoting California tourism to potential visitors.

This bill would amend the Budget Act of 2006 by reverting the sum of \$6,300,000 to the General Fund from the amounts allocated for use by the California Travel and Tourism Commission if the referendum submitted to the passenger car rental industry, as assessment rates, as specified in (3) above, have been agreed to.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 1936.01 is added to the Civil Code, to
2 read:

3 1936.01. (a) For the purpose of this section, the following
4 definitions shall apply:

5 (1) "Airport concession fee" means a charge collected by a
6 rental company from a renter that is the renter's proportionate
7 share of the amount paid by the rental company to the owner or
8 operator of an airport for the right or privilege of conducting a
9 vehicle rental business on the airport's premises.

10 (2) "Quote" means an estimated cost of rental provided by a
11 rental company or a third party to a potential customer by
12 telephone, in-person, computer-transmission, or other means, that
13 is based on information provided by the potential customer and
14 used to generate an estimated cost of rental, including, but not
15 limited to, any of the following: potential dates of rental,
16 locations, or classes of car.

17 (3) "Tourism commission assessment" means the charge
18 collected by a rental company from a renter that has been
19 established by the California Travel and Tourism Commission
20 pursuant to Section 13995.65 of the Government Code.

21 (b) ~~(4)~~ Notwithstanding subdivision (n) of Section 1936, ~~a~~ *the*
22 *following provisions shall apply:*

23 (1) A rental company shall only advertise a rental rate that
24 includes the entire amount, except taxes, a customer facility
25 charge, if any, and a mileage charge, if any, that a renter must
26 pay to hire or lease the vehicle for the period of time to which the
27 rental rate applies.

28 (2) When providing a quote, or imposing charges for a rental,
29 the rental company may separately state the rental rate, taxes,
30 customer facility charge, if any, airport concession fee, if any,
31 tourism commission assessment, if any, and a mileage charge, if
32 any, that a renter must pay to hire or lease the vehicle for the
33 period of time to which the rental rate applies. A rental company
34 may not charge in addition to the rental rate, taxes, a customer
35 facility charge, if any, airport concession fee, if any, tourism
36 commission assessment, if any, and a mileage charge, if any, any
37 fee that must be paid by the renter as a condition of hiring or
38 leasing the vehicle, such as, but not limited to, required fuel or

1 airport surcharges other than customer facility charges and
2 airport concession fees.

3 (3) If customer facility charges, airport concession fees, or
4 tourism commission assessments are imposed, the rental
5 company shall do each of the following:

6 (A) At the time the quote is given, provide the person
7 receiving the quote with a good faith estimate of the rental rate,
8 taxes, customer facility charge, if any, airport concession fee, if
9 any, and tourism commission assessment, if any, as well as the
10 total charges for the entire rental. The total charges, if provided
11 on an Internet Web site, shall be displayed in a typeface at least
12 as large as any rental rate disclosed on that page and shall be
13 provided on a page that the person receiving the quote may reach
14 by following links through no more than two Internet Web site
15 pages, including the page on which the rental rate is first
16 provided. The good faith estimate may exclude mileage charges
17 and charges for optional items that cannot be determined prior to
18 completing the reservation based upon the information provided
19 by the person.

20 (B) At the time and place the rental commences, clearly and
21 conspicuously disclose in the rental contract, or that portion of
22 the contract that is provided to the renter, the total of the rental
23 rate, taxes, customer facility charge, if any, airport concession
24 fee, if any, and tourism commission assessment, if any, for the
25 entire rental, exclusive of charges that cannot be determined at
26 the time the rental commences. Charges imposed pursuant to this
27 subparagraph shall be no more than the amount of the quote
28 provided in a confirmed reservation, unless the person changes
29 the terms of the rental contract subsequent to making the
30 reservation.

31 (C) Provide each person, other than those persons within the
32 rental company, offering quotes to actual or prospective
33 customers access to information about customer facility charges,
34 airport concession fees, and tourism commission assessments as
35 well as access to information about when those charges apply.
36 Any person providing quotes to actual or prospective customers
37 for the hire or lease of a vehicle from a rental company shall
38 provide the quotes in the manner described in subparagraph (A).

39 (4) In addition to the rental rate, taxes, customer facility
40 charges, if any, airport concession fees, if any, tourism

1 commission assessments, if any, and mileage charges, if any, a
2 rental company may charge for an item or service provided in
3 connection with a particular rental transaction if the renter could
4 have avoided incurring the charge by choosing not to obtain or
5 utilize the optional item or service. Items and services for which
6 the rental company may impose an additional charge, include,
7 but are not limited to, optional insurance and accessories
8 requested by the renter, service charges incident to the renter's
9 optional return of the vehicle to a location other than the location
10 where the vehicle was hired or leased, and charges for refueling
11 the vehicle at the conclusion of the rental transaction in the event
12 the renter did not return the vehicle with as much fuel as was in
13 the fuel tank at the beginning of the rental. A rental company also
14 may impose an additional charge based on reasonable age criteria
15 established by the rental company.

16 (5) A rental company may not charge any fee for authorized
17 drivers in addition to the rental charge for an individual renter.

18 (6) If a rental company states a rental rate in print
19 advertisement or in a telephonic, in-person, or
20 computer-transmitted quote, the rental company shall clearly
21 disclose in that advertisement or quote the terms of any mileage
22 conditions relating to the rental rate disclosed in the
23 advertisement or quote, including, but not limited to, to the extent
24 applicable, the amount of mileage and gas charges, the number of
25 miles for which no charges will be imposed, and a description of
26 geographic driving limitations within the United States and
27 Canada.

28 (7) (A) When a rental rate is stated in an advertisement, in
29 connection with a car rental at an airport where a customer
30 facility charge is imposed, the rental company shall clearly
31 disclose the existence and amount of the customer facility
32 charge. For the purposes of this subparagraph, advertisements
33 include radio, television, other electronic media, and print
34 advertisements. If the rental rate advertisement is intended to
35 include transactions at more than one airport imposing a
36 customer facility charge, a range of charges may be stated in the
37 advertisement. However, all rental rate advertisements that
38 include car rentals at airport destinations shall clearly and
39 conspicuously include a toll-free telephone number whereby a

1 customer can be told the specific amount of the customer facility
2 charge to which the customer will be obligated.

3 (B) If any person or entity other than a rental car company,
4 including a passenger carrier or a seller of travel services,
5 advertises a rental rate for a car rental at an airport where a
6 customer facility charge is imposed, that person or entity shall,
7 provided they are provided with information about the existence
8 and amount of the charge, to the extent not specifically
9 prohibited by federal law, clearly disclose the existence and
10 amount of the charge. If a rental car company provides the
11 person or entity with rental rate and customer facility charge
12 information, the rental car company is not responsible for the
13 failure of that person or entity to comply with this subparagraph.

14 (8) If a rental company delivers a vehicle to a renter at a
15 location other than the location where the rental company
16 normally carries on its business, the rental company may not
17 charge the renter any amount for the rental for the period before
18 the delivery of the vehicle. If a rental company picks up a rented
19 vehicle from a renter at a location other than the location where
20 the rental company normally carries on its business, the rental
21 company may not charge the renter any amount for the rental for
22 the period after the renter notifies the rental company to pick up
23 the vehicle.

24 (9) Except as otherwise permitted pursuant to the customer
25 facility charge, a rental company may not separately charge, in
26 addition to the rental rate, a fee for transporting the renter to the
27 location where the rented vehicle will be delivered to the renter.

28 (c) *A renter may bring an action against a rental company for
29 the recovery of damages and appropriate equitable relief for a
30 violation of this section. The prevailing party shall be entitled to
31 recover reasonable attorney's fees and costs.*

32 (d) *Any waiver of any of the provisions of this section shall be
33 void and unenforceable as contrary to public policy.*

34 (e)

35 (e) This section shall become operative only if the Secretary of
36 Business, Transportation and Housing provides notice to the
37 Legislature and the Secretary of State and posts notice on its
38 Internet Web site that the conditions described in Section
39 13995.92 of the Government Code have been satisfied.

1 SEC. 2. 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.
- 25 (4) Transportation and travel services.

26 (f) “Industry segment” means a portion of an industry
27 category. For example, rental cars are an industry segment of the
28 transportation and travel services industry category.

29 (g) “Office” means the Office of Tourism, also popularly
30 referred to as the Division of Tourism, within the Business,
31 Transportation and Housing Agency.

32 (h) “Person” means an individual, public entity, firm,
33 corporation, association, or any other business unit, whether
34 operating on a for-profit or nonprofit basis.

35 (i) “Referendum” means any vote by mailed ballot of
36 measures recommended by the commission and approved by the
37 secretary pursuant to Section 13995.60, except for the initial
38 referendum, which shall consist of measures contained in the
39 selection committee report, discussed in Section 13995.30.

1 (j) “Secretary” means the Secretary of Business,
2 Transportation and Housing.

3 (k) “Selection committee” means the Tourism Selection
4 Committee described in Article 3 (commencing with Section
5 13995.30).

6 (l) This section shall become inoperative on the date the
7 Secretary of Business, Transportation and Housing provides
8 notice to the Legislature and the Secretary of State and posts
9 notice on its Internet Web site that the conditions described in
10 Section 13995.92 have been satisfied, and if the secretary
11 provides those notices, this section is repealed as of January 1,
12 2008, unless a later enacted statute, that is enacted before January
13 1, 2008, deletes or extends that date.

14 SEC. 3. Section 13995.20 is added to the Government Code,
15 to read:

16 13995.20. Unless the context otherwise requires, the
17 definitions in this section govern the construction of this chapter.

18 (a) “Appointed commissioner” means a commissioner
19 appointed by the Governor pursuant to paragraph (2) of
20 subdivision (b) of Section 13995.40.

21 (b) “Assessed business” means a person required to pay an
22 assessment pursuant to this chapter, and until the first assessment
23 is levied, any person authorized to vote for the initial referendum.
24 An assessed business shall not include a public entity or a
25 corporation when a majority of the corporation’s board of
26 directors is appointed by a public official or public entity, or
27 serves on the corporation’s board of directors by virtue of being
28 elected to public office, or both.

29 (c) “Commission” means the California Travel and Tourism
30 Commission.

31 (d) “Elected commissioner” means a commissioner elected
32 pursuant to subdivision (d) of Section 13995.40.

33 (e) “Industry category” means the following classifications
34 within the tourism industry:

35 (1) Accommodations.

36 (2) Restaurants and retail.

37 (3) Attractions and recreation.

38 (4) Transportation and travel services, other than passenger car
39 rental.

40 (5) Passenger car rental.

1 (f) “Industry segment” means a portion of an industry
 2 category. For example, motor home rentals are an industry
 3 segment of the transportation and travel services industry
 4 category.

5 (g) “Maximum assessment” means a dollar amount, adopted
 6 by the commission, over which an assessed business shall not be
 7 required to pay. The commission may adopt differing amounts of
 8 maximum assessment for each industry category or industry
 9 segment.

10 (h) “Office” means the Office of Tourism, also popularly
 11 referred to as the Division of Tourism, within the Business,
 12 Transportation and Housing Agency.

13 (i) “Person” means an individual, public entity, firm,
 14 corporation, association, or any other business unit, whether
 15 operating on a for-profit or nonprofit basis.

16 (j) “Referendum” means any vote by mailed ballot of
 17 measures recommended by the commission and approved by the
 18 secretary pursuant to Section 13995.60, except for the initial
 19 referendum, which shall consist of measures contained in the
 20 selection committee report, discussed in Section 13995.30.

21 (k) “Secretary” means the Secretary of Business,
 22 Transportation and Housing.

23 (l) “Selection committee” means the Tourism Selection
 24 Committee described in Article 3 (commencing with Section
 25 13995.30).

26 (m) This section shall become operative only if the Secretary
 27 of Business, Transportation and Housing provides notice to the
 28 Legislature and the Secretary of State and posts notice on its
 29 Internet Web site that the conditions described in Section
 30 13995.92 have been satisfied.

31 SEC. 4. Section 13995.40 of the Government Code is
 32 amended to read:

33 13995.40. (a) Upon approval of the initial referendum, the
 34 office shall establish a nonprofit mutual benefit corporation
 35 named the California Travel and Tourism Commission. The
 36 commission shall be under the direction of a board of
 37 commissioners, which shall function as the board of directors for
 38 purposes of the Nonprofit Corporation Law.

39 (b) The board of commissioners shall consist of 37
 40 commissioners comprising the following:

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

2 (2) (A) Twelve members, who are professionally active in the
3 tourism industry, and whose primary business, trade, or
4 profession is directly related to the tourism industry, shall be
5 appointed by the Governor. Each appointed commissioner shall
6 represent only one of the 12 tourism regions designated by the
7 office, and the appointed commissioners shall be selected so as to
8 represent, to the greatest extent possible, the diverse elements of
9 the tourism industry. Appointed commissioners are not limited to
10 individuals who are employed by or represent assessed
11 businesses.

12 (B) If an appointed commissioner ceases to be professionally
13 active in the tourism industry or his or her primary business,
14 trade, or profession ceases to be directly related to the tourism
15 industry, he or she shall automatically cease to be an appointed
16 commissioner 90 days following the date on which he or she
17 ceases to meet both of the eligibility criteria specified in
18 subparagraph (A), unless the commissioner becomes eligible
19 again within that 90-day period.

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

23 (c) The commission established pursuant to Section 15364.52
24 shall be inoperative so long as the commission established
25 pursuant to this section is in existence.

26 (d) Elected commissioners shall be elected by industry
27 category in a referendum. Regardless of the number of ballots
28 received for a referendum, the nominee for each commissioner
29 slot with the most weighted votes from assessed businesses
30 within that industry category shall be elected commissioner. In
31 the event that an elected commissioner resigns, dies, or is
32 removed from office during his or her term, the commission shall
33 appoint a replacement from the same industry category that the
34 commissioner in question represented, and that commissioner
35 shall fill the remaining term of the commissioner in question. The
36 number of commissioners elected from each industry category
37 shall be determined by the weighted percentage of assessments
38 from that category.

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

4 (f) (1) The term of each elected commissioner shall
5 commence July 1 of the year next following his or her election,
6 and shall expire on June 30 of the fourth year following his or her
7 election. If an elected commissioner ceases to be employed by or
8 with an assessed business in the category and segment which he
9 or she was representing, his or her term as an elected
10 commissioner shall automatically terminate 90 days following
11 the date on which he or she ceases to be so employed, unless,
12 within that 90-day period, the commissioner again is employed
13 by or with an assessed business in the same category and
14 segment.

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

19 (g) With the exception of the secretary, no commissioner shall
20 serve for more than two consecutive terms. For purposes of this
21 subdivision, the phrase “two consecutive terms” shall not include
22 partial terms.

23 (h) Except for the original commissioners, all commissioners
24 shall serve four-year terms. One-half of the commissioners
25 originally appointed or elected shall serve a two-year term, while
26 the remainder shall serve a four-year term. Every two years
27 thereafter, one-half of the commissioners shall be appointed or
28 elected by referendum.

29 (i) The selection committee shall determine the initial slate of
30 candidates for elected commissioners. Thereafter the
31 commissioners, by adopted resolution, shall nominate a slate of
32 candidates, and shall include any additional candidates
33 complying with the procedure described in Section 13995.62.

34 (j) The commissioners shall elect a vice chairperson from the
35 elected commissioners.

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

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

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

1 (n) No person shall receive compensation for serving as a
2 commissioner, but each commissioner shall receive
3 reimbursement for reasonable expenses incurred while on
4 authorized commission business.

5 (o) Assessed businesses shall vote only for commissioners
6 representing their industry category.

7 (p) Commissioners shall comply with the requirements of the
8 Political Reform Act of 1974 (Title 9 (commencing with Section
9 81000)). The Legislature finds and declares that commissioners
10 appointed or elected on the basis of membership in a particular
11 tourism segment are appointed or elected to represent and serve
12 the economic interests of those tourism segments and that the
13 economic interests of these members are the same as those of the
14 public generally.

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

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

21 SEC. 5. Section 13995.40.5 is added to the Government
22 Code, to read:

23 13995.40.5. (a) Notwithstanding subdivision (d) of Section
24 13995.40, the number of commissioners elected from each
25 industry category shall be determined by the weighted percentage
26 of assessments from that category, except that no more than six
27 commissioners shall be elected from the passenger car rental
28 category.

29 (b) This section shall become operative only if the Secretary of
30 Business, Transportation and Housing provides notice to the
31 Legislature and the Secretary of State and posts notice on its
32 Internet Web site that the conditions described in Section
33 13995.92 have been satisfied.

34 SEC. 6. Section 13995.49 of the Government Code is
35 amended to read:

36 13995.49. The commission may by written contract accept a
37 voluntary assessment from any person in a travel and tourism
38 related business who is not an assessed business. The contract
39 shall apply solely to the person in question and not to any other
40 person in a travel and tourism related business that is not an

1 assessed business. The contract shall provide that the voluntary
2 assessment be proportionately equivalent to the assessment that
3 would be levied if the person were an assessed business under
4 this chapter, shall permit that business to vote on any referendum
5 conducted under this chapter as if that person were an assessed
6 business, and shall have a term concurrent with the effective
7 period of any referendum on which the person votes. Individual
8 voluntary assessments under this section shall be enforceable
9 only under the terms of the respective contracts to which they
10 pertain. This section shall not be construed to preclude donations
11 to, or cooperative marketing activities of any kind with, the
12 commission on the part of any person.

13 SEC. 7. Section 13995.60 of the Government Code is
14 amended to read:

15 13995.60. (a) As used in this article and Article 7
16 (commencing with Section 13995.65), “assessment level” means
17 the estimated gross dollar amount received by assessment from
18 all assessed businesses on an annual basis, and “assessment
19 formula” means the allocation method used within each industry
20 segment (for example, percentage of gross revenue).

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

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

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

11 (e) If the referendum includes more than one possible
12 assessment rate, the rate with the plurality of weighted votes shall
13 be adopted.

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

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

26 (h) This section shall become inoperative on the date the
27 Secretary of Business, Transportation and Housing provides
28 notice to the Legislature and the Secretary of State and posts
29 notice on its Internet Web site that the conditions described in
30 Section 13995.92 have been satisfied, and if the secretary
31 provides those notices, this section is repealed as of January 1,
32 2008, unless a later enacted statute, that is enacted before January
33 1, 2008, deletes or extends that date.

34 SEC. 8. Section 13995.60 is added to the Government Code,
35 to read:

36 13995.60. (a) As used in this article and Article 7
37 (commencing with Section 13995.65), “assessment level” means
38 the estimated gross dollar amount received by assessment from
39 all assessed businesses on an annual basis, and “assessment
40 formula” means the allocation method used within each industry

1 segment (for example, percentage of gross revenue or percentage
2 of transaction charges).

3 (b) Commencing on January 1, 2003, a referendum shall be
4 called every two years, and the commission, by adopted
5 resolution, shall determine the slate of individuals who will run
6 for commissioner. The resolution shall also cover, but not be
7 limited to, the proposed assessment level for each industry
8 category, based upon specified assessment formulae, together
9 with necessary information to enable each assessed business to
10 determine what its individual assessment would be. Commencing
11 with the referendum held in 2007 and every six years thereafter,
12 the resolution shall also cover the termination or continuation of
13 the commission. The resolution may also include an amended
14 industry segment allocation formula and the percentage
15 allocation of assessments between industry categories and
16 segments. The commission may specify in the resolution that a
17 special, lower assessment rate that was set pursuant to
18 subdivision (c) of Section 13995.30 for a particular business will
19 no longer apply due to changes in the unique circumstance that
20 originally justified the lower rate. The resolution may include up
21 to three possible assessment levels for each industry category,
22 from which the assessed businesses will select one assessment
23 level for each industry category by plurality weighted vote.

24 (c) The commission shall deliver to the secretary the
25 resolution described in subdivision (b). The secretary shall call a
26 referendum containing the information required by subdivision
27 (b) plus any additional matters complying with the procedures of
28 subdivision (b) of Section 13995.62.

29 (d) When the secretary calls a referendum, all assessed
30 businesses shall be sent a ballot for the referendum. Every ballot
31 that the secretary receives by the ballot deadline shall be counted,
32 utilizing the weighted formula adopted initially by the selection
33 committee, and subsequently amended by referendum.

34 (e) If the commission's assessment level is significantly
35 different from what was projected when the existing assessment
36 formula was last approved by referendum, a majority of
37 members, by weighted votes of an industry category, may
38 petition for a referendum to change the assessment formula
39 applicable to that industry category.

1 (f) If the referendum includes more than one possible
2 assessment rate for each industry category, the rate with the
3 plurality of weighted votes within a category shall be adopted.

4 (g) Notwithstanding any other provision of this section, if the
5 commission delivers to the secretary a resolution pertaining to
6 any matter described in subdivision (b), the secretary shall call a
7 referendum at a time or times other than as specified in this
8 section. Each referendum shall contain only those matters
9 contained in the resolution.

10 (h) Notwithstanding any other provision of this section, the
11 secretary shall identify, to the extent reasonably feasible, those
12 businesses that would become newly assessed due to a change in
13 category, segment, threshold, or exemption status sought via
14 referendum, and provide those businesses the opportunity to vote
15 in that referendum.

16 (i) This section shall become operative only if the Secretary of
17 Business, Transportation and Housing provides notice to the
18 Legislature and the Secretary of State and posts notice on its
19 Internet Web site that the conditions described in Section
20 13995.92 have been satisfied.

21 SEC. 9. Section 13995.64.5 is added to the Government
22 Code, to read:

23 13995.64.5. (a) Notwithstanding subdivision (a) of Section
24 13995.64, if an assessed business within the passenger car rental
25 category pays an assessment greater than the maximum
26 assessment, determined by the commission for other industry
27 categories, the weighted percentage assigned to that assessed
28 business shall be the same as though its assessment were equal to
29 the highest maximum assessment.

30 (b) This section shall become operative only if the Secretary of
31 Business, Transportation and Housing provides notice to the
32 Legislature and the Secretary of State and posts notice on its
33 Internet Web site that the conditions described in Section
34 13995.92 have been satisfied.

35 SEC. 10. Section 13995.65 of the Government Code is
36 amended to read:

37 13995.65. (a) Each industry category shall establish a
38 committee to determine the following within its industry
39 category: industry segments, assessment formula for each
40 industry segment, and any types of business exempt from

1 assessment. The initial segment committees shall consist of the
2 subcommittee for that category as described in subdivision (d) of
3 Section 13995.30. Following approval of the assessment by
4 referendum, the committees shall be selected by the commission,
5 based upon recommendations from the tourism industry.
6 Committee members need not be commission members.

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

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

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

38 (e) An assessed business may appeal an assessment to the
39 secretary based upon the fact that the business does not meet the
40 definition established for an assessed business within its industry

1 segment or that the level of assessment is incorrect. An appeal
2 brought under this subdivision shall be supported by substantial
3 evidence submitted under penalty of perjury by affidavit or
4 declaration as provided in Section 2015.5 of the Code of Civil
5 Procedure. If the error is based upon failure of the business to
6 provide the required information in a timely manner, the
7 secretary may impose a fee for reasonable costs incurred by the
8 secretary in correcting the assessment against the business as a
9 condition of correcting the assessment.

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

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

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

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

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

36 (A) Calculated on the basis of each individual business
37 location.

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

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

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

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

21 SEC. 11. Section 13995.65.5 is added to the Government
22 Code, to read:

23 13995.65.5. (a) Notwithstanding Section 13995.65 or any
24 other provision of this chapter, for purposes of calculating the
25 assessment for a business within the passenger car rental
26 category, the assessment shall be collected only on each rental
27 transaction that commences at either an airport or at a hotel or
28 other overnight lodging with respect to which a city, city and
29 county, or county is authorized to levy a tax as described in
30 Section 7280 of the Revenue and Taxation Code. A transaction
31 commencing at an airport or hotel or other overnight lodging
32 subject to a transient occupancy tax as described in Section 7280
33 of the Revenue and Taxation Code, including those that
34 commence at a location that might otherwise by regulation be
35 exempt from assessment, shall be subject to the assessment. The
36 assessment shall always be expressed as a fixed percentage of the
37 amount of the rental transaction.

38 (b) This section shall become operative only if the Secretary of
39 Business, Transportation and Housing provides notice to the
40 Legislature and the Secretary of State and posts notice on its

1 Internet Web site that the conditions described in Section
2 13995.92 have been satisfied.

3 SEC. 12. Section 13995.77 of the Government Code is
4 amended to read:

5 13995.77. A business is exempt from the assessments
6 provided for in this chapter if any of the following apply:

7 (a) The business is a travel agency or tour operator that derives
8 less than 20 percent of its gross revenue annually from travel and
9 tourism occurring within the state. A travel agency or tour
10 operator that qualifies for this exemption may participate as an
11 assessed business by paying an assessment calculated on the
12 same basis applicable to other travel agencies or tour operators,
13 respectively, and by filing a written request with the secretary
14 indicating its desire to be categorized as an assessed business.

15 (b) The business is a small business. For purposes of this
16 section, “small business” means a business location with less
17 than one million dollars (\$1,000,000) in total California gross
18 annual revenue from all sources. This threshold amount may be
19 lowered, but never to less than five hundred thousand dollars
20 (\$500,000), by means of a referendum conducted pursuant to
21 Section 13995.60; however, the secretary may elect to forgo
22 assessing a business for which the expense incurred in collecting
23 the assessment is not commensurate with the assessment that
24 would be collected.

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

34 (d) Any business exempted pursuant to this section may enter
35 into a contract for voluntary assessments pursuant to Section
36 13995.49.

37 SEC. 13. Section 13995.92 is added to the Government Code,
38 to read:

39 13995.92. (a) The California Travel and Tourism
40 Commission shall submit a referendum to the passenger rental

1 car industry as soon as possible, but not later than March 31,
 2 2007. The referendum shall propose an assessment level upon the
 3 passenger rental car industry, as an industry category, under this
 4 chapter. The proposed assessment rate shall be set at a level
 5 determined by the commission that will generate funding that
 6 will be sufficient, when aggregated together with other funding
 7 for the commission, minus amounts reverted to the general fund
 8 pursuant to Item 0520-495 of Section 2 of the Budget Act of
 9 2006, for a spending plan for the 2006–07 fiscal year of
 10 twenty-five million dollars (\$25,000,000), and for the 2007–08
 11 fiscal year of fifty million dollars (\$50,000,000).

12 (b) The commission shall report to the Secretary of Business,
 13 Transportation and Housing if the referendum and assessment
 14 rates described in subdivision (a) are agreed to. The secretary
 15 shall immediately provide notice of that agreement to the
 16 Legislature and the Secretary of State and shall also post notice
 17 of that agreement on its Internet Web site.

18 SEC. 14. Item 0520-495 is added to Section 2 of the Budget
 19 Act of 2006 to read:

20
 21 0520-495—Reversion, Secretary of Business, Transportation
 22 and Housing. The sum of \$6,300,000, appropriated in
 23 Item 0520-001-0001, Budget Act of 2006 (Ch. 47, Stats.
 24 2006; Ch. 48, Stats. 2006), and made available to the Cali-
 25 fornia Travel and Tourism Commission pursuant to Provi-
 26 sion 1 thereof, shall revert to the General Fund.

27
 28 SEC. 15. Section 14 of this act shall become operative only if
 29 the Secretary of Business, Transportation and Housing provides
 30 notice to the Legislature and the Secretary of State and posts
 31 notice on its Internet Web site that the conditions described in
 32 Section 13995.92 of the Government Code have been satisfied.

33 SEC. 16. Notwithstanding any reversion of moneys to the
 34 General Fund pursuant to Section 14 of this act, or any amounts
 35 appropriated to the commission in any future budget act below
 36 the levels specified in Section 13995.70 of the Government
 37 Code, the authorization provided to the travel and tourism
 38 industry under that code section to terminate the commission by
 39 referendum shall be deemed suspended until the end of the
 40 2007–08 fiscal year if the California Travel and Tourism

- 1 Commission finds that the referendum held pursuant to Section
- 2 13995.92 of the Government Code allows the commission to
- 3 meet the funding goals specified therein.

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