

Regular Session, 2013

SENATE BILL NO. 242

BY SENATOR MURRAY AND REPRESENTATIVE LEGER

TOURISM. Authorizes the levy of an optional hotel assessment by a tourism organization upon its hotel members and provides for treating such assessment as a surcharge to hotel guests. (gov sig)

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AN ACT

To enact Chapter 4 of Title 21 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 21:201 through 208, relative to hotels and lodging houses; to provide with respect to optional assessments on hotels that are levied by a comprehensive membership based tourism organization on its members that are operators of hotels or motels located in the parish of Orleans; to provide that hotel and income taxes shall not apply to such surcharges; to provide for a hotel referendum to approve such an optional assessment; to provide for enhancement of the sales and marketing capabilities and other general purposes of the organization; to provide for the direct or indirect benefit of growing the traveler economy; to provide for levying hotel assessments as surcharges on hotel or motel folios; to provide for terms and definitions; to provide for an effective date; and to provide for related matters.

Notice of intention to introduce this Act has been published as provided by Article III, Section 13 of the Constitution of Louisiana.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 4 of Title 21 of the Louisiana Revised Statutes of 1950, comprised of R.S. 21:201 through 208 is hereby enacted, to read as follows:

1           **§201. Legislative findings**

2                     The legislature hereby finds and declares all of the following:

3                     (1) There is a direct correlation between the amount of funds spent on  
4                     destination-based marketing, sales and promotion of a locality and an increase  
5                     in the number of conventions, meetings, visitors, occupancy of hotels, retail sales  
6                     of food, beverages and other items, admissions to cultural and other  
7                     entertainment venues, collections of related state and local sales and use taxes,  
8                     job creation and a resulting general economic vitality of the traveler economy  
9                     and related businesses in the locality.

10                    (2) It is in the state's public interest and vital to the welfare of the state's  
11                    economy to facilitate and encourage cooperating public-private partnerships for  
12                    the enhancement and expansion of the traveler economy and to provide for  
13                    increased hotel occupancy, tourism, economic development and job creation in  
14                    Orleans Parish.

15           **§202. Purpose**

16                     This Chapter is enacted for the purpose of facilitating the collection and  
17                     use of private sector originated supplementary funds to market and promote  
18                     greater New Orleans as a traveler destination and to provide for increased  
19                     economic activity within its traveler economy, including increased number of  
20                     conventions, meetings, visitors, hotel occupancy, food, beverage and other retail  
21                     sales, tourism, including cultural and family tourism, job creation and other  
22                     economic development and related purposes through optional, self-generated,  
23                     private-sector hotel self-assessment program.

24           **§203. Definitions**

25                     For the purposes of this Chapter, the following terms shall have the  
26                     following meanings unless the context clearly indicates otherwise:

27                     (1) "Assessed hotel" means a person operating a hotel and required to  
28                     pay a hotel assessment pursuant to this Chapter and, until the hotel assessment  
29                     is first levied, any person operating a hotel authorized to vote in the

1           referendum.

2                   (2) "City" means the city of New Orleans.

3                   (3) "Hotel" means any establishment engaged in the business of  
4 furnishing or providing rooms intended or designed for dwelling, lodging, or  
5 sleeping purposes to transient guests where such establishment consists of ten  
6 or more guest rooms but does not include any hospital, convalescent or nursing  
7 home or sanitarium, or any hotel-like facility operated by or in connection with  
8 a hospital or medical clinic providing rooms exclusively for patients and their  
9 families.

10                  (4) "Hotel assessment" means any hotel assessment that is: (a) levied  
11 under this Chapter by a tourism organization on its members that are operators  
12 of hotels located in Orleans Parish; (b) calculated by reference either to room  
13 occupancy or room sales; and (c) for the general purposes of the organization,  
14 or otherwise for the direct or indirect benefit of the tourism industry and  
15 economic development, for sales, marketing and promotion, and for driving and  
16 hosting tourism growth and visitors.

17                  (5) "Operator of a hotel" means the person in whose name the  
18 occupational license for the hotel is issued by the city.

19                  (6) "Person" means an individual, public entity, firm, corporation,  
20 partnership, limited liability company, trust, association, or any other business  
21 entity or juridical person, whether operating on a for-profit or nonprofit basis.

22                  (7) "Referendum" means any vote by assessed hotels by mailed ballot of  
23 measures proposed by the tourism organization in accordance with the  
24 provisions of this Chapter.

25                  (8) "Surcharge" means any charge in addition to the daily room charge  
26 for services to a hotel guest that is required to be paid in order to occupy a room  
27 and any hotel assessment that is passed through to hotel guests as a charge on  
28 the guest folio. Surcharge does not include charges for food and beverages,  
29 Internet access, spa access or other goods or services sold at the hotel unless the

1 payment for the goods or services is required in connection with the use of the  
2 hotel room.

3 (9) "Tourism organization" means any private nonprofit corporation  
4 domiciled in Orleans Parish that is a nationally accredited comprehensive  
5 membership based organization engaged in destination sales and marketing,  
6 visitor support and other tourism related activities including the New Orleans  
7 Convention and Visitors Bureau.

8 §204. Levy of hotel assessments; use of proceeds.

9 A. A tourism organization, under authority of its articles or bylaws,  
10 may levy hotel assessments upon its hotel members in Orleans Parish under this  
11 Chapter for destination marketing, sales, public relations and for other matters  
12 deemed by the tourism organization to benefit directly or indirectly economic  
13 development, the traveler economy and tourism growth as shall be approved by  
14 resolution of the board of directors of the tourism organization and ratified by  
15 a vote of the assessed hotels in a referendum conducted in accordance with R.S.  
16 21:206.

17 B. A hotel assessment proposed to be levied under this Chapter by a  
18 tourism organization (i) shall be authorized by its board of directors or other  
19 governing body by resolution that describes in general terms the hotel  
20 assessment to be levied and includes a statement that the hotel assessment is to  
21 be levied under this Chapter and (ii) shall be approved in a referendum of the  
22 assessed hotels as provided in R.S. 21:206.

23 C. A hotel operator shall not be liable for payment of a hotel assessment  
24 under this Chapter for any time period in which it is not a member of the  
25 tourism organization.

26 D. Notwithstanding any other provision of law, an assessed hotel shall  
27 place the hotel assessment as a mandatory surcharge on the folio and in so doing  
28 shall comply with R.S. 21:205(C). Receipts from any such surcharge for hotel  
29 assessments levied pursuant to this Chapter are not part of gross receipt or

1 gross revenue for any purpose, including the calculation of hotel sales or  
2 occupancy taxes, or state income taxes, and are not part of income pursuant to  
3 any lease or operator agreement. Payment of the assessment to the tourism  
4 organization shall not be taken as a deduction from income for state income tax  
5 purposes.

6 E. Any hotel assessment levied and passed through to a guest as a  
7 surcharge in accordance with this Chapter is an enforceable obligation of the  
8 guest as and to the same extent as are daily room charges and other lawful  
9 surcharges.

10 F. Procedures for collection of hotel assessments, interest charges and  
11 penalties for delinquent remittance of hotel assessments to the tourism  
12 organization or other matters incident to the hotel assessment shall be as  
13 provided by resolution or in the bylaws of the tourism organization. The state,  
14 the city, and any and all of their agencies and political subdivisions may, upon  
15 the request of a tourism organization, enter into a cooperative endeavor  
16 agreement with the tourism organization for the collection of hotel assessments  
17 on behalf of the tourism organization.

18 §205. Disclosure of surcharges

19 A. Rate schedules setting forth room charges and any surcharges as  
20 required by this Chapter for hotels shall be posted or disclosed in all hotels and  
21 shall be delivered to the director of the department of finance of the city as  
22 required by applicable local ordinances.

23 B. Each operator of a hotel shall comply with applicable local  
24 ordinances relating to furnishing a schedule of charges for the rental or use of  
25 hotel rooms and shall include therein surcharges in effect for the following year,  
26 a schedule of binding rates, applicable surcharges and length-of-stay  
27 requirements.

28 C. An operator of a hotel shall place line itemization of any hotel  
29 assessment for which the operator is responsible on the guest folio as a charge

1 to the guest immediately after, or included in, the itemization of hotel tax and  
2 occupancy tax. All hotel assessments to be passed through to guests as  
3 surcharges shall be disclosed on all information or communication platforms of  
4 the hotel in the same manner as are other surcharges and hotel and occupancy  
5 taxes as required by applicable laws and regulations.

6 D. The provisions of this Chapter shall not supersede or limit the  
7 authority of a tourism organization to levy assessments on its members under  
8 the nonprofit corporation law or other applicable law and apply only to  
9 assessments that are declared by resolution of the board of directors or other  
10 governing body of the tourism organization to be made under this Chapter.

11 §206. Referendum

12 A. Any hotel assessment to be levied pursuant to this Chapter shall be  
13 approved by a vote of the assessed hotels in a referendum conducted in  
14 accordance with this Section. A referendum of all assessed hotels shall be called  
15 by the president of the Greater New Orleans Hotel and Lodging Association,  
16 Inc., by written notice mailed to all hotel operators identified by the tourism  
17 organization as its members in accordance with such procedures as the tourism  
18 organization may establish in its discretion. In any referendum, each assessed  
19 hotel shall have a number of votes equal to the number of its hotel rooms as  
20 shown on its occupational license. In any referendum, two-thirds of the votes  
21 cast shall be required to approve or ratify any hotel assessment.

22 B. The written notice of the referendum shall include a description of any  
23 proposed hotel assessment, including the effective date thereof, a ballot, and a  
24 statement of the referendum period, which shall be not less than thirty days  
25 from the date of the mailing of the notice and a ballot. Ballots may be delivered  
26 to the Greater New Orleans Hotel and Lodging Association, Inc., or any other  
27 person designated for the purpose of receiving, tabulating and counting ballots  
28 at any time during the referendum period. The Greater New Orleans Hotel and  
29 Lodging Association, Inc., may in its discretion extend the referendum period

1 not more than fifteen additional days. At the close of the referendum period, the  
 2 Greater New Orleans Hotel and Lodging Association, Inc., or other person  
 3 designated for the purpose of receiving, tabulating and counting ballots shall  
 4 count and tabulate the ballots received during the referendum period. All  
 5 ballots shall be presumed to be valid. A notice of the results of the referendum  
 6 shall be mailed by the Greater New Orleans Hotel and Lodging Association,  
 7 Inc., or any other person designated for the purpose of receiving, tabulating and  
 8 counting ballots to the tourism organization and the assessed hotels.

9 C. Referendum costs. The costs of the referendum, in the first instance,  
 10 shall be paid by the tourism organization and shall be reimbursed from hotel  
 11 assessments as received.

12 §207. Liberal construction

13 This Chapter, being necessary for the welfare of the state, the city, the  
 14 parish and its residents, shall be liberally construed to effect the purposes  
 15 thereof.

16 §208. Severability

17 The provisions of this Chapter are severable. It is intended that if any  
 18 provision of this Chapter should be adjudged invalid or unenforceable, then  
 19 such provision shall be ineffective to the extent of such invalidity or  
 20 unenforceability without invalidating the remaining provisions of this Chapter.

21 Section 2. This Act shall become effective upon signature by the governor  
 22 or, if not signed by the governor, upon expiration of the time for bills to become law  
 23 without signature by the governor, as provided by Article III, Section 18 of the  
 24 Constitution of Louisiana. If vetoed by the governor and subsequently approved by  
 25 the legislature, this Act shall become effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Angela L. De Jean.

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DIGEST

Proposed law provides that there is a direct correlation between the amount of funds spent  
 on destination-based marketing, sales and promotion of a locality and an increase in the

number of conventions, meetings, visitors, occupancy of hotels, retail sales of food, beverages and other items, admissions to cultural and other entertainment venues, collections of related state and local sales and use taxes, job creation and a resulting general economic vitality of the traveler economy and related businesses in the locality.

Proposed law provides that it is in the state's public interest and vital to the welfare of the state's economy to facilitate and encourage cooperating public-private partnerships for the enhancement and expansion of the traveler economy and to provide for increased hotel occupancy, tourism, economic development and job creation in Orleans Parish.

Proposed law provides that proposed law is enacted for the purpose of facilitating the collection and use of private sector originated supplementary funds to market and promote greater New Orleans as a traveler destination and to provide for increased economic activity within its traveler economy, including increased number of conventions, meetings, visitors, hotel occupancy, food beverage and other retail sales, tourism, including cultural and family tourism, new job creation and other economic development and related purposes through an optional, self-generated, private-sector hotel self-assessment program.

Proposed law provides that for the purposes of proposed law, the following terms shall have the following meanings unless the context clearly indicates otherwise:

- (1) "Assessed hotel" means a person operating a hotel and required to pay an hotel assessment pursuant to proposed law and, until the hotel assessment is first levied, any person operating a hotel authorized to vote for in referendum.
- (2) "City" means the city of New Orleans.
- (3) "Hotel" means any establishment engaged in the business of furnishing or providing rooms intended or designed for dwelling, lodging, or sleeping purposes to transient guests where such establishment consists of ten or more guest rooms but does not include any hospital, convalescent or nursing home or sanitarium, or any hotel-like facility operated by or in connection with a hospital or medical clinic providing rooms exclusively for patients and their families.
- (4) "Hotel assessment" means any hotel assessment that is: (a) levied under this Chapter by a tourism organization on its members that are operators of hotels located in Orleans Parish; (b) calculated by reference either to room occupancy or room sales; and (c) for the general purposes of the organization, or otherwise for the direct or indirect benefit of the tourism industry and economic development, for sales, marketing and promotion, and for driving and hosting tourism growth and visitors.
- (5) "Operator of a hotel" means the person in whose name the occupational license for the hotel is issued by the city.
- (6) "Person" means an individual, public entity, firm, corporation, partnership, limited liability company, trust, association, or any other business entity or juridical person, whether operating on a for-profit or nonprofit basis.
- (7) "Referendum" means any vote by assessed hotels by mailed ballot of measures proposed by the tourism organization in accordance with the provisions of proposed law.
- (8) "Surcharge" means any charge in addition to the daily room charge for services to a hotel guest that is required to be paid in order to occupy a room and any hotel assessment that is passed through to hotel guests as a charge on the guest folio. Surcharge does not include charges for food and beverages, Internet access, spa access or other goods or services sold at the hotel unless the payment for the goods or services is required in connection with the use of the hotel room.

(9) "Tourism organization" means any private nonprofit corporation domiciled in Orleans Parish that is a nationally accredited comprehensive membership based organization engaged in destination sales and marketing, visitor support and other tourism related activities including the New Orleans Convention and Visitors Bureau.

Proposed law provides that a tourism organization, under authority of its articles or bylaws, may levy hotel assessments upon its hotel members in Orleans Parish pursuant to present law for destination marketing, sales, public relations and for other matters deemed by the tourism organization to benefit directly or indirectly economic development, the traveler economy and tourism growth as shall be approved by resolution of the board of directors of the tourism organization and ratified by a vote of the assessed hotels in a referendum conducted in accordance with proposed law.

Proposed law provides that a hotel assessment proposed to be levied pursuant to proposed law by a tourism organization (i) shall be authorized by its board of directors or other governing body by resolution that describes in general terms the hotel assessment to be levied and includes a statement that the hotel assessment is to be levied pursuant to proposed law and (ii) shall be approved in a referendum of the assessed hotels as provided in proposed law.

Proposed law provides that a hotel operator shall not be liable for payment of a hotel assessment under proposed law for any time period in which it is not a member of the tourism organization.

Proposed law provides that in addition to the right to resign from the tourism organization as provided in the bylaws or other governing documents of the tourism organization, an assessed hotel shall have the right to resign its membership in the tourism organization by written notice given to the tourism organization within 30 days of the announcement of the results of the referendum approving the hotel assessment and, for purposes of proposed law, such resignation shall be effective as of the date of the referendum.

Proposed law provides that a hotel operator shall not be an assessed hotel liable for payment of a hotel assessment under proposed law during any time period in which it is not a member of the tourism organization.

Proposed law provides that an assessed hotel shall place the hotel assessment as a mandatory surcharge on the folio and in so doing shall comply with proposed law.

Proposed law provides that receipts from any hotel assessments levied pursuant to proposed law are not part of gross receipts or gross revenue for any purpose, including the calculation of hotel sales or occupancy taxes, or state income taxes, and are not part of income pursuant to any lease or operator agreement.

Proposed law provides that payment of the assessment to the tourism organization shall not be taken as a deduction from income for state income tax purposes.

Proposed law provides that any hotel assessment levied and passed through to a guest as a surcharge in accordance with proposed law is an enforceable obligation of the guest as and to the same extent as are daily room charges and other lawful surcharges.

Proposed law provides that procedures for collection of hotel assessments, interest charges and penalties for delinquent remittance of hotel assessments to the tourism organization or other matters incident to the hotel assessment shall be as provided by resolution or in the bylaws of the tourism organization.

Proposed law provides that the state, the city, and any and all of their agencies and political subdivisions may, upon the request of a tourism organization, enter into a cooperative

endeavor agreement with the tourism organization for the collection of hotel assessments on behalf of the tourism organization.

Proposed law provides that rate schedules setting forth room charges and any surcharges as required by proposed law for hotels shall be posted or disclosed in all hotels and shall be delivered to the director of the department of finance of the city as required by applicable local ordinances.

Proposed law provides that each operator of a hotel shall comply with applicable local ordinances relating to furnishing a schedule of charges for the rental or use of hotel rooms and shall include therein surcharges in effect for the following year, a schedule of binding rates, applicable surcharges and length-of-stay requirements.

Proposed law provides that an operator of a hotel shall place line itemization of any hotel assessment for which the operator is responsible on the guest folio as a charge to the guest immediately after, or included in, the itemization of hotel tax and occupancy tax.

Proposed law provides that all hotel assessments to be passed through to guests as surcharges shall be disclosed on all information or communication platforms of the hotel in the same manner as are other surcharges and hotel and occupancy taxes as required by applicable laws and regulations.

Proposed law provides that the provisions of proposed law shall not supersede or limit the authority of a tourism organization to levy assessments on its members under the nonprofit corporation law or other applicable law and apply only to assessments that are declared by resolution of the board of directors or other governing body of the tourism organization to be made under proposed law.

Proposed law provides that any hotel assessment to be levied pursuant to proposed law shall be approved by a vote of the assessed hotels in a referendum conducted in accordance with proposed law.

Proposed law provides that a referendum of all assessed hotels shall be called by the president of the Greater New Orleans Hotel and Lodging Association, Inc., by written notice mailed to all hotel operators identified by the tourism organization as its members in accordance with such procedures as the tourism organization may establish in its discretion.

Proposed law provides that in any referendum, each assessed hotel shall have a number of votes equal to the number of its hotel rooms as shown on its occupational license. In any referendum, 2/3 of the votes cast shall be required to approve or ratify any hotel assessment.

Proposed law provides that the written notice of the referendum shall include a description of any hotel assessment, including the effective date thereof, a ballot, and a statement of the referendum period, which shall be not less than 30 days from the date of the mailing of the notice and a ballot.

Proposed law provides that ballots may be delivered to the Greater New Orleans Hotel and Lodging Association, Inc., or any other person designated for the purpose of receiving, tabulating and counting ballots at any time during the referendum period. The Greater New Orleans Hotel and Lodging Association, Inc., may in its discretion extend the referendum period not more than 15 additional days.

Proposed law provides that at the close of the referendum period, the Greater New Orleans Hotel and Lodging Association, Inc., or other person designated for the purpose of receiving, tabulating and counting ballots shall count and tabulate the ballots received during the referendum period. All ballots shall be presumed to be valid.

Proposed law provides that a notice of the results of the referendum shall be mailed by the

Greater New Orleans Hotel and Lodging Association, Inc. or any other person designated for the purpose of receiving, tabulating and counting ballots to the tourism organization and the assessed hotels.

Proposed law provides that the costs of the referendum, in the first instance, shall be paid by the tourism organization and shall be reimbursed from hotel assessments as received.

Proposed law provides that proposed law shall be liberally construed to effect the purposes of proposed law.

Proposed law provides that the provisions of proposed law are severable.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 21:201-208)