

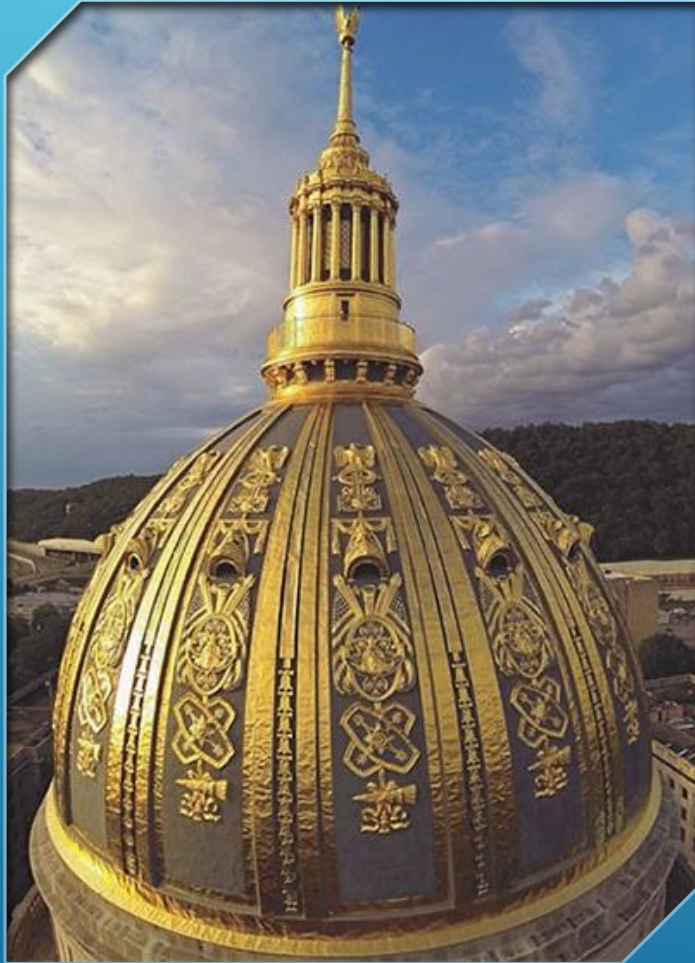
TOURISM & LODGING LEGISLATION OF NOTE FOR COUNTY COMMISSIONERS

Richie Heath • Executive Director
rheath@bowlesrice.com



- ▶ The West Virginia Hospitality & Travel Association (WVHTA) represents the food service, lodging, convention and visitors bureaus, and travel industries in the state.
- ▶ WVHTA was created through the consolidation of the WV Hotel & Motel Association, WV Restaurant Association, WV Travel Industry Association, and WV Convention & Visitors Bureau Association.
- ▶ Currently, WVHTA has over 130 members comprised of hotels, cabins, restaurants, travel attractions, Convention and Visitor Bureaus, and associate members.
- ▶ WVHTA has worked closely with the WV Association of Convention & Visitors Bureaus (WVACVB) on the legislation to be discussed today.





OVERVIEW OF 2021 REGULAR SESSION

- Legislature passed 282 bills, including the Budget Bill, during the 60-day regular session.
- Governor Justice signed all but one bill, which was vetoed on technical grounds and repassed.
- A great session for tourism in West Virginia – several key bills complete legislative action
- Two key measures for County Commissioners to keep in mind – SB 270 and SB 488
- Both measures relate to various aspects of the local hotel occupancy tax.

As a general matter:

- ▶ Counties are authorized to adopt hotel occupancy tax, except within municipal borders – W.Va. Code 7-18-1, *et seq.*
- ▶ Requires a county to adopt an order calling for levy of tax – W.Va. Code 7-18-1(c)
- ▶ Can impose a rate of up to 6% of the consumer price paid for hotel room
- ▶ Proceeds of tax to be spent in accordance with W.Va. Code 7-18-14, with at least 50% of such funds going towards CVBs located within the county or region.

HOTEL OCCUPANCY TAX OVERVIEW

S.B. 270

- ▶ Colloquially referred to as the “AirBNB” legislation
- ▶ Similar legislation passed in 2020, but was vetoed by Governor
- ▶ Requires marketplace facilitators – web sites providing for short term rentals – to post and collect local hotel occupancy taxes on their platform

S.B. 270

- ▶ Applies to all sales made by a marketplace facilitator on or after January 1, 2022.
- ▶ Marketplace facilitators must remit taxes to the local taxing authority – the counties and the municipalities
- ▶ State Tax Department, working with the Department of Tourism, has provided AirBNB and others with the various tax rates and other information necessary to collect and remit the hotel occupancy tax.

S.B. 270

- ▶ Statute requires a sufficient “economic nexus” for marketplace facilitators to collect hotel occupancy tax – *South Dakota v. Wayfair*
- ▶ A marketplace facilitator is responsible for collecting and remitting in West Virginia if:
 - ▶ Facilitator makes or facilitates West Virginia sales exceeding \$100,000 for the immediately preceding or current calendar year, or
 - ▶ Facilitator makes or facilitates West Virginia sales in 200 or more separate transactions for the immediately preceding or current calendar year

S.B. 270

- ▶ Of note, SB 270 does not require counties with an existing hotel occupancy tax to take any additional steps to effectuate.
- ▶ Qualifying marketplace facilitators are responsible for the collection and remittance of the tax – not the individuals or businesses actually renting a room or lodging.
- ▶ Facilitators must separately state the tax authorized by the county on all of its bills, invoices, etc. W.Va. Code 7-18-4(c)
- ▶ As a result, counties should hopefully see a boost from hotel occupancy taxes that were not previously collected – ***West Virginia has had one of the greatest year-over-year increase in bookings during the pandemic.***

S.B. 488

- ▶ Colloquially referred to as the “CVB Oversight” legislation
- ▶ Provides new oversight and reporting requirements for convention and visitors bureaus
- ▶ Counties must take these new factors in consideration when distributing hotel occupancy tax proceeds pursuant to W.Va. Code 7-18-14

S.B. 488

- ▶ W.Va. Code 7-18-13a now establishes certain minimum requirements for a CVB to qualify for a distribution of hotel occupancy tax proceeds:
 - ▶ Must file an annual report detailing expenditure of hotel occupancy tax proceeds
 - ▶ Must have a minimum annual budget – though no specific dollar amount is required
 - ▶ Must establish a marketing plan
 - ▶ Allocation of approximately 40% of revenues to advertising & marketing
 - ▶ Full-time executive director, physical office or visitor center, and web site/marketing materials
 - ▶ Must receive accreditation from an accrediting body, such as the WV Association of Convention & Visitors Bureaus (WVACVB)
 - ▶ Annual reporting to CVB's funding entities

S.B. 488

- ▶ Other notable requirements:
 - ▶ Must conduct an audit or financial review once every 3 years
 - ▶ State imposed moratorium on establishing new CVBs until June 30, 2024.
- ▶ **Key Takeaways:**
 - ▶ A CVB ***must be in compliance*** with these newly enacted requirements of W.Va. Code 7-18-13a in order to receive hotel occupancy funds from the county.
 - ▶ Penalty provisions of W.Va. Code 7-18-14(e) updated to deter allocation of proceeds to a non-compliant CVB – misdemeanor offense to willingly and knowingly facilitate a transfer of such funds.

Questions?

Bowles Rice

