

No. 1986-5

AN ACT

HB 801

Amending the act of July 28, 1953 (P.L.723, No.230), entitled, as amended, "An act relating to counties of the second class and second class A; amending, revising, consolidating and changing the laws relating thereto," further providing for hydroelectric generating facilities; and clarifying the authority of counties of the second class A to continue to enact the hotel room tax.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 1970.2 of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, amended December 7, 1982 (P.L.778, No.224) and December 10, 1982 (P.L.1079, No.252), is reenacted and amended to read:

Section 1970.2. Hotel Room Rental.—(a) The following words and phrases when used in this section shall have, unless the context clearly indicates otherwise, the meanings ascribed to them in this section:

"Consideration," receipts, fees, charges, rentals, leases, cash, credits, property of any kind or nature, or other payment received by operators in exchange for or in consideration of the use or occupancy by a transient of a room or rooms in a hotel for any temporary period.

"Convention center or exhibition hall," a building or series of buildings not used for the retail sale of merchandise or part of any shopping center, mall or other retail center together with any land appurtenant thereto, a major function of which is to house meetings, exhibitions, shows, conventions, assemblies, convocations, and similar gatherings: Provided, That one of the aforesaid buildings shall contain a minimum of seventy-five thousand (75,000) gross square feet of exhibition space for shows and conventions.

"Cooperating political subdivision or agency of government," any city or public authority located in such county within whose boundaries a convention center or exhibition hall is planned or constructed which shares with the county any duties, obligations or privileges with respect to the convention center situated therein.

"Hotel," a hotel, motel, inn, guest house, or other building located within the taxing jurisdiction which holds itself out by any means including advertising, license, registration with any innkeeper's group, convention listing association, travel publication or similar association or with any government agency as being available to provide overnight lodging or use of facility space for consideration to persons seeking temporary accommodation; any place which advertises to the public at large or any segment thereof that it will provide beds, sanitary facilities or other space for a temporary period to members of the public at large; any place recognized as a hostelry: Provided, That portions of such facility which are devoted to persons who have established permanent residence shall not be included in this definition.

“Municipality,” a township, borough or a home rule municipality which was formerly a township or borough.

“Occupancy,” the use or possession or the right to the use or possession by any person other than a permanent resident of any room in a hotel for any purpose or the right to the use or possession of the furnishings or to the services accompanying the use and possession of the room.

“Operator,” any individual, partnership, nonprofit or profit-making association or corporation or other person or group of persons who maintain, operate, manage, own, have custody of, or otherwise possess the right to rent or lease overnight accommodations in any hotel to the public for consideration.

“Operating deficit,” the excess of expenses over receipts from the operation and management of a convention center or exhibition hall.

“Patron,” any person who pays the consideration for the occupancy of a room or rooms in a hotel.

“Permanent resident,” any person who has occupied or has the right to occupancy of any room or rooms in a hotel as a patron or otherwise for a period exceeding thirty (30) consecutive days.

“Recognized tourist promotion agency,” the nonprofit corporation, organization, association or agency which is and has been engaged in planning and promoting programs designed to stimulate and increase the volume of tourist, visitor and vacation business within counties served by such agencies as that term is defined in the act of April 28, 1961 (P.L.111, No.50), known as the “Tourist Promotion Law,” and which particular nonprofit corporation, organization, association or agency heretofore has been recognized by the Department of Commerce all in accordance with the terms of said “Tourist Promotion Law.”

“Room,” a space in a hotel set aside for use and occupancy by patrons, or otherwise, for consideration, having at least one bed or other sleeping accommodation provided therein.

“Temporary,” a period of time not exceeding thirty (30) consecutive days.

“Transaction,” the activity involving the obtaining by a transient or patron of the use or occupancy of a hotel room from which consideration emanates to the operator under an express or an implied contract.

“Transient,” any individual who obtains accommodation in any hotel for himself by means of registering at the facility for the temporary occupancy of any room for the personal use of that individual by paying to the operator of the facility a fee in consideration therefor.

(b) The county commissioners in each county of the second class are hereby authorized to impose an excise tax at three per centum (3%) on the consideration received by each operator of a hotel within the county from each transaction of renting a room or rooms to accommodate transients. The county commissioners in each county of the second class A are hereby authorized to impose an excise tax not to exceed three per centum (3%) on the consideration received by each operator of a hotel within the county from each transaction of renting a room or rooms to accommodate transients. The tax shall be collected by the operator from the patron of the room and paid over to the county as herein provided.

(c) The treasurer of each county electing to impose the tax authorized under this section is hereby directed to collect the tax and in counties of the second class to deposit the revenues received from the tax in a special fund established solely for purposes of a convention center or exhibition hall. The revenues shall be distributed as follows:

(1) One-third (1/3) of all revenues received by the county from the excise tax shall be distributed to a tourist promotion agency pursuant to section 2199.14.

(2) One-third (1/3) of the three per centum (3%) excise tax collected by hotels within a municipality wherein a convention center or exhibition hall is located (less the cost of collecting the tax) shall, at the request of such municipality, be returned to that municipality wherein such convention center or exhibition hall is located, for deposit in that municipality's special fund established solely for purposes of paying for promotional programs implemented by a nonprofit organization which are designed to stimulate and increase the volume of conventions and visitors within the municipality: Provided, however, That an audited report on the income and expenditures incurred by the municipality receiving funds from the excise tax on hotel room rentals shall be made annually to the board of county commissioners.

(3) All remaining revenues from the three per centum (3%) excise tax received by the county shall be used exclusively for operational and maintenance expenditures of the convention center or exhibition hall as provided in subsection (d).

In counties of the second class A the revenues shall be deposited in a special fund established solely for purposes of travel and tourism promotion and advertising related to such promotion. The treasurer is hereby authorized to establish rules and regulations concerning the collection of the tax.

(d) In counties of the second class, expenditures from the fund established pursuant to subsection (c) shall be used for all purposes which a public authority may determine to be reasonably necessary to the support, operation and maintenance of a convention center or exhibition hall, including but not limited to the following:

(1) advertising and publicizing tourist attractions in the area served by the agency;

(2) promoting and otherwise encouraging the use of the facilities in the area served by the agency by the public as a whole;

(3) promoting and attracting conventions, exhibitions and other functions to utilize facilities in the area served by the agency;

(4) precompletion advertising and publicizing of any convention center or exhibition hall;

(5) promoting and attracting conventions, exhibitions and other functions to utilize the convention center or exhibition hall;

(6) promoting and otherwise encouraging the use of the premises by the public as a whole, or any segment thereof;

(7) operating, furnishing and otherwise maintaining and equipping the premises and realty appurtenant thereto;

(8) furnishing and equipping the building and grounds. It is the intention of this section that the receipts from any tax imposed pursuant to the provisions of this act be used in counties of the second class to offset the entire operating deficit, if any, of any convention center or exhibition hall including, equally, shares of any cooperating political subdivision or agency of government incurred pursuant to any agreement presently existing or executed hereafter. The operating deficit shall be determined by any public authority which is the designated operating agency of any convention center or exhibition hall.

(d.1) In counties of the second class A, expenditures from the fund established pursuant to subsection (c) shall be annually appropriated by the county commissioners for tourist promotion activities, to be executed by the designated tourist promotion agency for:

- (1) marketing the area served by the agency as a leisure travel destination;
- (2) marketing the area served by the agency as a convention and business travel destination;
- (3) marketing the area served by the agency to the public as a whole for use of its tourist and convention facilities;
- (4) using all appropriate marketing tools to accomplish these purposes, including advertising, publicity, publications, direct marketing, direct sales, participation in travel trade shows, etc.

The county commissioners may deduct from the funds collected any direct or indirect costs attributable to the collection of the tax.

(e) (1) The provisions of this section relating to counties of the second class shall remain in force from year to year. Revenues in excess of amounts needed to offset operating deficits shall be determined by the public authority and may be accumulated, and any revenues may be used to provide part or all of any annual payment to be paid by a county or a political subdivision under any agreement with any public authority created under the act of July 29, 1953 (P.L.1034, No.270), known as the "Public Auditorium Authorities Law," which has been designated as the operating agency for a convention center or exhibition hall in support of bonds issued by the public authority; or to effect necessary expansion or further capital improvements, within the discretion of the cooperating political subdivisions and the public authority.

(2) **[The provisions of this section relating to counties of the second class A shall remain in force for three (3) years from the effective date of this act, at which time such provisions shall terminate without further action on the part of the county commissioners.] *The provisions of this section relating to counties of the second class A shall remain in force and effect for three (3) years from the date of this reenactment and may be continued thereafter by ordinance or resolution of the county commissioners of the respective counties.***

(f) Each tax year for any tax imposed hereunder shall run concurrently with the calendar year.

Section 2. Sections 2101-A, 2104-A and 2106-A of the act, added December 7, 1982 (P.L.778, No.224), are amended to read:

Section 2101-A. **Manufacture and Sale of [Electricity] *Electric Power*.**—Any county of the second class may **[manufacture electricity] *develop, transmit, utilize or distribute, to facilities owned by the county or by a municipal authority created by the county, electric power*** by means of a hydroelectric generating facility owned [or operated by the county], ***operated and developed as a qualifying cogeneration, low-head hydroelectric generation or a small power production facility pursuant to and in accordance with the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617, 16 U.S.C. §§ 796 and 824a-3)***. Any county of the second class owning or operating a hydroelectric generating facility may make contracts for the sale of **[electricity] *electric power*** to persons engaged in the business of the manufacture or sale of electricity.

Section 2104-A. **Construction or Purchase of Hydroelectric Generation Facilities.**—Any county of the second class may construct or purchase facilities or real estate for the purpose of **[manufacturing electricity] *developing, transmitting, utilizing or distributing electric power*** by hydroelectric generation. Any county of the second class may purchase a hydroelectric generating facility at such price as may be agreed upon by the county and the person, copartnership or a majority of the stockholders of a corporation that owns such facility. ***As used in this section the phrase “distributing electric power” means the distribution of electric power produced by hydroelectric generation to facilities owned by the county or by a municipal authority created by the county.***

Section 2106-A. **Authority Compliance.**—A county of the second class desiring to construct, or purchase, or operate, or sell a hydroelectric facility, as a municipal body, may authorize an existing authority or establish a new authority to ***construct***, operate, generate or sell the power from the authority's hydroelectric facilities under the laws of the Commonwealth authorizing the creation and jurisdiction of municipal authorities.

Section 3. (a) Section 2 of this act shall take effect in 60 days.

(b) The remainder of this act shall take effect immediately.

APPROVED—The 14th day of February, A. D. 1986.

DICK THORNBURGH