

Assembly Bill No. 2592

CHAPTER 790

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.

[Approved by Governor September 29, 2006. Filed with
Secretary of State September 29, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2592, 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.

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

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

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

(1) “Airport concession fee” means a charge collected by a rental company from a renter that is the renter’s proportionate share of the amount paid by the rental company to the owner or operator of an airport for the right or privilege of conducting a vehicle rental business on the airport’s premises.

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

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

(b) Notwithstanding subdivision (n) of Section 1936, the following provisions shall apply:

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

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

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

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

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

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

(4) In addition to the rental rate, taxes, customer facility charges, if any, airport concession fees, if any, tourism commission assessments, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge, include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may

impose an additional charge based on reasonable age criteria established by the rental company.

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

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

(7) (A) When a rental rate is stated in an advertisement, in connection with a car rental at an airport where a customer facility charge is imposed, the rental company shall clearly disclose the existence and amount of the customer facility charge. For the purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. If the rental rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of charges may be stated in the advertisement. However, all rental rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Accommodations.
- (2) Restaurants and retail.
- (3) Attractions and recreation.
- (4) Transportation and travel services.

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

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

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

(i) "Referendum" means any vote by mailed ballot of measures recommended by the commission and approved by the secretary pursuant to Section 13995.60, except for the initial referendum, which shall consist

of measures contained in the selection committee report, discussed in Section 13995.30.

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

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

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

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

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

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

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

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

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

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

- (1) Accommodations.
- (2) Restaurants and retail.
- (3) Attractions and recreation.
- (4) Transportation and travel services, other than passenger car rental.
- (5) Passenger car rental.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13995.60. (a) As used in this article and Article 7 (commencing with Section 13995.65), “assessment level” means the estimated gross dollar

amount received by assessment from all assessed businesses on an annual basis, and “assessment formula” means the allocation method used within each industry segment (for example, percentage of gross revenue).

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

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

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

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

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

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

(h) This section shall become inoperative on the date the Secretary of Business, Transportation and Housing provides notice to the Legislature and the Secretary of State and posts notice on its Internet Web site that the conditions described in Section 13995.92 have been satisfied, and if the

secretary provides those notices, this section is repealed as of January 1, 2008, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13995.65. (a) Each industry category shall establish a committee to determine the following within its industry category: industry segments, assessment formula for each industry segment, and any types of business exempt from assessment. The initial segment committees shall consist of the subcommittee for that category as described in subdivision (d) of Section 13995.30. Following approval of the assessment by referendum, the committees shall be selected by the commission, based upon recommendations from the tourism industry. Committee members need not be commission members.

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

(c) The initial industry category and industry segment allocations shall be included in the selection committee report required by subdivision (b) of Section 13995.30. Changes to the industry segment allocation formula

may be recommended to the commission by a segment committee at the biennial commission meeting scheduled to approve the referendum resolution pursuant to Section 13995.60. At the same meeting, the commission may amend the percentage allocations among industry categories. Any item discussed in this section that is approved by resolution of the commission, except amendments to the percentage allocations among industry categories, shall be placed on the next referendum, and adopted if approved by the majority of weighted votes cast.

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

(e) An assessed business may appeal an assessment to the secretary based upon the fact that the business does not meet the definition established for an assessed business within its industry segment or that the level of assessment is incorrect. An appeal brought under this subdivision shall be supported by substantial evidence submitted under penalty of perjury by affidavit or declaration as provided in Section 2015.5 of the Code of Civil Procedure. If the error is based upon failure of the business to provide the required information in a timely manner, the secretary may impose a fee for reasonable costs incurred by the secretary in correcting the assessment against the business as a condition of correcting the assessment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13995.92. (a) The California Travel and Tourism Commission shall submit a referendum to the passenger rental car industry as soon as possible, but not later than March 31, 2007. The referendum shall propose an assessment level upon the passenger rental car industry, as an industry category, under this chapter. The proposed assessment rate shall be set at a level determined by the commission that will generate funding that will be sufficient, when aggregated together with other funding for the commission, minus amounts reverted to the general fund pursuant to Item 0520-495 of Section 2 of the Budget Act of 2006, for a spending plan for the 2006–07 fiscal year of twenty-five million dollars (\$25,000,000), and for the 2007–08 fiscal year of fifty million dollars (\$50,000,000).

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

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

0520-495—Reversion, Secretary of Business, Transportation and Housing. The sum of \$6,300,000, appropriated in Item 0520-001-0001, Budget Act of 2006 (Ch. 47, Stats. 2006; Ch. 48, Stats. 2006), and made available to the California Travel and Tourism Commission pursuant to Provision 1 thereof, shall revert to the General Fund.

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

SEC. 16. Notwithstanding any reversion of moneys to the General Fund pursuant to Section 14 of this act, or any amounts appropriated to the commission in any future budget act below the levels specified in Section 13995.70 of the Government Code, the authorization provided to the travel and tourism industry under that code section to terminate the commission by referendum shall be deemed suspended until the end of the 2007–08 fiscal year if the California Travel and Tourism Commission finds that the referendum held pursuant to Section 13995.92 of the Government Code allows the commission to meet the funding goals specified therein.