

Senate Bill No. 1398

CHAPTER 795

An act to amend Sections 15364.51, 15364.52, 15364.53, 15364.54, 15372.61, 15372.65, 15372.66, 15372.70, 15372.72, 15372.73, 15372.74, 15372.75, 15372.100, 15372.101, 15372.104, 15372.105, 15372.106, 15372.110, 15372.111, and 15372.118 of, and to add Section 15372.79 to, the Government Code, relating to tourism.

[Approved by Governor September 22, 1996. Filed
with Secretary of State September 24, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1398, Johnston. Tourism: California Tourism Marketing Act.

(1) Existing law expresses the intent of the Legislature in the enactment of the California Tourism Marketing Act, in the promotion of travel and tourism to and within the state.

This bill would make additional findings and declarations in that regard.

(2) Existing law requires the Director of the Office of Tourism to report annually to the Governor, the Legislature, and the California Tourism Commission, as specified.

This bill would revise the requirements of the report.

(3) Existing law provides procedures for the establishment of a private nonprofit corporation named the California Tourism Marketing Commission whose employees, with a specified exception, are not state employees, and sets forth the duties of the commission. Existing law requires the commissioners of the California Tourism Marketing Commission to comply with the reporting requirements of the Fair Political Practices Commission.

This bill would rename the commission the California Travel and Tourism Commission, and provide that the commission is a separate, independent California nonprofit mutual benefit corporation, whose employees, with that specified exception, are employees solely of the commission. It would revise various duties of the commission and would, among other things, require the commissioners to comply with the requirements of the Political Reform Act of 1974. To the extent that this bill would require compliance with the Political Reform Act of 1974 from persons who are not required to comply with it under existing law, this change would constitute an amendment to that act. This bill would also make findings and declarations with regard to appointed or elected commissioners.

(4) Existing law provides procedures for the establishment of an assessment upon approval of a tourism industry referendum. Existing



law requires the Office of Tourism to coordinate the marketing and promotion of an initial tourism industry referendum.

This bill would delete the latter requirement with respect to the Office of Tourism. It would make various revisions in regard to the referendum and the imposition of assessments.

(5) Existing law requires the Office of Tourism to calculate the assessments due by each assessed business. Existing law also requires the Office of Tourism, subject to approval by the California Tourism Marketing Commission, to establish by regulation the procedure for assessment collection.

This bill would remove the former requirement with respect to the Office of Tourism. This bill would require the Office of Tourism, in consultation with the commission, renamed the California Travel and Tourism Commission, to establish by regulation the procedure for assessment collection.

(6) This bill would additionally expand the definition of a crime by requiring that an appeal of an assessment under certain circumstances be supported by evidence submitted under penalty of perjury, thereby imposing a state-mandated local program.

(7) Existing law makes a violation of the Political Reform Act of 1974 subject to administrative, civil, and criminal penalties.

This bill would impose a state-mandated local program by imposing these penalties on certain persons who violate the provisions of the bill.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would also provide that no reimbursement is required by provisions of this act for a specified reason.

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

SECTION 1. Section 15364.51 of the Government Code is amended to read:

15364.51. It is the intention of the Legislature in enacting this part or amending this part to add Chapter 2.2 (commencing with Section 15372.60) to do all of the following:

(a) Reaffirm a commitment to the fostering of the economic activity inherent in tourism promotion as delineated as a mandate to



the agency and to the Office of Tourism, and, in furtherance of those goals and pursuant to the supervision and oversight of the secretary, further specific state governmental goals, as established by the Legislature, to result in a promotion program that produces nonideological and commercial communication that bears the characteristics of, and is entitled to all the privileges and protections of, government speech.

(b) To provide the state with an effective means of promoting and marketing the State of California as a destination for tourists on a worldwide basis, to provide the private sector with a more effective means of promoting tourism efforts and a forum for removing obstacles to overall tourism growth in order for California to remain competitive in world and national tourism marketplaces.

(c) Optimize the contribution of the tourism-related industries to the state's economic prosperity and to expand employment opportunities.

(d) Make the opportunity for, and benefits of, tourism in the state accessible to its residents and visitors and ensure that present and future generations are afforded adequate tourism resources and attractions.

(e) Encourage the preservation and use of California historic and scenic environments to enhance the state's appeal as a destination for domestic and international tourism.

(f) Encourage California residents to take maximum advantage of travel and tourism opportunities within the State of California by enabling them to obtain accurate, timely, up-to-date travel and tourism information benefiting both urban and rural travelers in various regions of the state.

(g) Contribute to personal growth, health, education, and intercultural appreciation of the geography, history, arts, and ethnicity of the State of California.

(h) Encourage the free and welcome entry of individuals traveling to the state in order to enhance international understanding and goodwill, consistent with immigration laws, the laws protecting the public health, and laws governing the importation of goods into the United States and state law.

(i) Encourage investment in new tourism facilities and renovation of older facilities.

(j) Assist in the collection, analysis, and timely dissemination of data that accurately measure the economic and social impact of tourism to, and within, the state in order to facilitate planning in the public and private sectors.

(k) Harmonize, to the maximum extent possible, all state activities in support of tourism and recreation with the needs of the general public, local governments, and the private sector, and to give leadership to all concerned with tourism in California.



SEC. 2. Section 15364.52 of the Government Code is amended to read:

15364.52. (a) There is hereby created in state government a California Tourism Commission, located within the Trade and Commerce Agency, which shall consist of the Secretary of Trade and Commerce who shall serve as the chairperson of the commission; the Director of the Office of Tourism, who shall serve as vice chairperson of the commission and nine other members appointed as follows:

(1) Five members shall be appointed by the Governor who are able persons, professionally active in the tourism industry representing diverse segments of that industry.

(2) One Member of the Senate shall be appointed by the Senate Committee on Rules and one Member of the Assembly shall be appointed by the Speaker of the Assembly. These members shall be ex officio, nonvoting members of the commission.

(3) Two members, who are able persons professionally active in the tourism industry representing diverse segments of that industry, shall be appointed one each by the Senate Committee on Rules and the Speaker of the Assembly.

(b) The Assistant Director of the Office of Tourism shall serve as secretary to the commission, a nonvoting position, and shall keep the minutes and records of all commission meetings and provide staff and whatever supportive services necessary to the activities of the commission.

(c) The commission shall meet quarterly and at other times and places as the chairperson may designate for the purpose of transacting the commission's business. Each commission member shall serve without compensation but shall be reimbursed for traveling and other expenses necessarily incurred in the performance of duties.

(d) The commission shall, in cooperation with the Office of Tourism and the agency, adopt, and annually update, a tourism marketing plan for the State of California that includes both domestic and international tourism promotion. The plan shall, to the extent practical and feasible, do all of the following:

(1) Serve as a guide for effectuating the California Tourism Policy Act, within available resources.

(2) Include an assessment of the activities and accomplishments of the Office of Tourism.

(3) Outline the intended program of tourism promotion and visitor service activities for the oncoming year.

(4) Delineate the ways, means, and programs by which tourism shall be promoted, including any cost-effective marketing methods and techniques to be employed.

(5) Identify resources as are reasonably necessary, from all sources both public and private, to accomplish these promotion and marketing activities.



(6) Identify and articulate cooperative or shared cost programs, or opportunities for these ventures, with private entities.

(7) Identify licensing opportunities, including licensing agents.

(8) Contain other information, data, or recommendations that may be germane to the marketing efforts of California pursuant to the intent of this chapter.

(e) The commission, in cooperation with the Office of Tourism, may convene committees consisting of qualified professionals and experts in various segments of the tourism industry that may be required to aid in the preparation of, or revision of, the marketing plan, or parts thereof, and as may from time to time be appropriate to further the purposes of this chapter.

(f) The commission shall work to the maximum extent practicable with governmental organizations and private for profit and nonprofit associations, corporations, organizations, or other entities, or all of these, whose purpose includes the promotion, representation, or development, or all of these, of travel and tourism.

(g) The commission established by this chapter shall be inoperative while the California Travel and Tourism Commission established pursuant to Chapter 2.2 (commencing with Section 15372.60) is in existence. The commission established by this chapter shall resume operation on the date the California Travel and Tourism Commission established by Chapter 2.2 (commencing with Section 15372.60) terminates.

SEC. 3. Section 15364.53 of the Government Code is amended to read:

15364.53. In addition to the intent of the Legislature expressed in Section 15364.51, and those functions of the Office of Tourism and the California Tourism Commission specified in Section 15364.52, the Office of Tourism and the California Travel and Tourism Commission established pursuant to Chapter 2.2 (commencing with Section 15372.60):

(a) Shall take advantage of particular promotional opportunities as may be presented.

(b) Shall facilitate travel and visitorship to, and within, California to the maximum extent feasible.

(c) May identify and assist in the development of a user-directed, computer-based, public-access information system serving the needs of the traveling and tourist public in urban and rural areas in California.

(d) Shall develop and publish research to determine sources and characteristics of present and future visitors to California and measure the effectiveness of marketing and service programs.

(e) Shall represent the state at domestic and international travel trade shows that provide an opportunity to promote a significant amount of travel to, and within, California.



(f) Shall cooperate with the federal government in the development and the promotion of the United States as a destination for international tourism.

(g) Shall implement the Tourism Marketing Plan.

SEC. 4. Section 15364.54 of the Government Code is amended to read:

15364.54. The director shall report on or before March 1 of each year to the Governor, the Legislature, and the California Tourism Commission. Each report shall do all of the following:

(a) Detail the tourism marketing plan that been adopted for the upcoming fiscal year. If the California Tourism Commission established pursuant to Section 15364.52 is inoperative, the secretary shall detail the marketing plan described in Section 15372.75.

(b) Assess the effectiveness of the previous calendar year's tourism marketing program.

(c) Document the directly attributable benefits of the previous calendar year's tourism marketing program:

(d) Identify methods of promoting travel to the state's lesser known and underutilized destinations.

(e) Measure the annual size (for the most recent measurable year) in aggregate and by county of the following:

(1) Travel and tourism spending in California.

(2) Travel and tourism employment in California.

(3) Travel and tourism generated state and local tax revenues.

(f) Identify additional data to be collected to assess further and adequately the benefits of the tourism marketing program.

(g) Establish standardized and accurate methods to measure annually California's share of the domestic and international tourism.

(h) Report on the income and expenses of the commission and otherwise generally with respect to its financial affairs. The portion of the report pertaining to the topics described in this subdivision shall be audited.

SEC. 5. Section 15372.61 of the Government Code is amended to read:

15372.61. The Legislature hereby finds and declares all of the following:

(a) Tourism is among California's biggest industries, contributing over fifty-two billion dollars (\$52,000,000,000) to the state economy and employing nearly 700,000 Californians in 1995.

(b) In order to retain and expand the tourism industry in California, it is necessary to market travel to and within California.

(c) State funding, while an important component of marketing, has been unable to generate sufficient funds to meet the threshold levels of funding necessary to reverse recent losses of California's tourism market share.

(d) In regard to the need for a cooperative partnership between business and industry:



(1) It is in the state's public interest and vital to the welfare of the state's economy to expand the market for, and develop, California tourism through a cooperative partnership funded in part by the state that will allow generic promotion and communication programs.

(2) The mechanism established by this chapter is intended to play a unique role in advancing the opportunity to expand tourism in California, and it is intended to increase the opportunity for tourism to the benefit of the tourism industry and the consumers of the State of California.

(3) Programs implemented pursuant to this chapter are intended to complement the marketing activities of individual competitors within the tourism industry.

(4) While it is recognized that smaller businesses participating in the tourism market often lack the resources or market power to conduct these activities on their own, the programs are intended to be of benefit to businesses of all sizes.

(5) These programs are not intended to, and they do not, impede the right or ability of individual businesses to conduct activities designed to increase the tourism market generally or their own respective shares of the California tourism market, and nothing in the mechanism established by this chapter shall prevent an individual business or participant in the industry from seeking to expand its market through alternative or complementary means, or both.

(6) (A) An individual business's own advertising initiatives are typically designed to increase its share of the California tourism market rather than to increase or expand the overall size of that market.

(B) In contrast, generic promotion of California as a tourism destination is intended and designed to maintain or increase the overall demand for California tourism and to maintain or increase the size of that market, often by utilizing promotional methods and techniques that individual businesses typically are unable, or have no incentive, to employ.

(7) This chapter creates a mechanism to fund generic promotions that, pursuant to the required supervision and oversight of the secretary as specified in this chapter, further specific state governmental goals, as established by the Legislature, and result in a promotion program that produces nonideological and commercial communication that bears the characteristics of, and is entitled to all the privileges and protections of, government speech.

(8) The programs implemented pursuant to this chapter shall be carried out in an effective and coordinated manner that is designed to strengthen the tourism industry and the state's economy as a whole.



(9) Independent evaluation of the effectiveness of the programs will assist the Legislature in ensuring that the objectives of the programs as set out in this section are met.

(e) An industry-approved assessment provides a private-sector financing mechanism that, in partnership with state funding, will provide the amount of marketing necessary to increase tourism marketing expenditures by California.

(f) The goal of the assessments is to assess the least amount per business, in the least intrusive manner, spread across the greatest practical number of tourism industry segments.

(g) The commission shall target an amount determined to be sufficient to market effectively travel and tourism to and within the state.

(h) In the course of developing its written marketing plan pursuant to Section 15372.75, the commission shall, to the maximum extent feasible, do both of the following:

(1) Seek advice and recommendations from all segments of California's travel and tourism industry and from all geographic regions of the state.

(2) Harmonize, as appropriate, its marketing plan with the travel and tourism marketing activities and objectives of the various industry segments and geographic regions.

(i) The commission's marketing budget shall be spent principally to bring travelers and tourists into the state. No more than 15 percent of the commission's assessed funds in any year shall be spent to promote travel within California, unless approved by at least two-thirds of the commissioners.

SEC. 6. Section 15372.65 of the Government Code is amended to read:

15372.65. 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.

(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 15372.70.

(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 Trade and Commerce Agency.

(h) “Person” means an individual, public entity, firm, corporation, association, or any other business unit, whether operating on a for a 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 15372.100, except for the initial referendum, which shall consist of measures contained in the selection committee report, discussed in Section 15372.66.

(j) “Secretary” means the Secretary of Trade and Commerce.

(k) “Selection Committee” means the Tourism Selection Committee described in Article 3 (commencing with Section 15372.66).

SEC. 7. Section 15372.66 of the Government Code is amended to read:

15372.66. (a) The Governor shall appoint a Tourism Selection Committee based upon recommendations from established industry associations. The committee shall consist of 25 representatives, with no fewer than six from each industry category. In selecting the representatives, the Governor shall, to the extent possible, give recognition to the diversity within each industry category. The committee shall select a chairperson from among its members. The office shall provide staffing for the committee.

(b) The selection committee shall convene on or before March 1, 1996. Not later than 150 days following the initial convening of the committee, the committee shall issue a report listing the following:

(1) Industry segments that will be included in the initial referendum.

(2) The target assessment level for the initial referendum.

(3) Percentage of funds to be levied against each industry category and segment. To the extent possible, the percentages shall be based upon quantifiable industry data, and amounts to be levied against industry segments shall bear an appropriate relationship to the benefit derived from travel and tourism by those industry segments.

(4) Assessment methodology and rate of assessment within each industry segment, that may include, but is not limited to, a percentage of gross revenue or a per transaction charge.



(5) Businesses, if any, within a segment to be assessed at a reduced rate, which may be set at zero, whether temporarily or permanently.

(6) Initial slate of proposed elected commissioners. The number of commissioners elected from each industry category shall be determined by the weighted percentage of assessments from that category.

(c) Nothing in this section shall preclude the selection committee from setting the assessment rate for a business within a segment at a lower rate, which may be set at zero, than a rate applicable to other businesses within that segment if the selection committee makes specific findings that the lower rate should apply due to unique geographical, financial, or other circumstances affecting the business. No business for which a zero assessment rate is set pursuant to this subdivision shall be sent a ballot or entitled to participate in the initial referendum, or in any subsequent referendum in which its rate of assessment is set at zero.

(d) The committee members for each industry category, also referred to as a subcommittee, shall prepare a recommendation for the entire committee on how the items specified in subdivision (b) should be determined for the industry segments within their industry category. The recommendations shall not include a discussion of industry category levies, which shall be determined solely by the committee. In the event that the subcommittee cannot agree on one or more of the items specified in subdivision (b), no recommendation shall be given in that category. The recommendations shall be presented to the full committee, which shall address each of the items contained in subdivision (b).

(e) In order to be assessed, an industry segment must be defined with sufficient clarity to allow for the cost-effective identification of assessed businesses within that segment.

(f) It shall be the responsibility of the office to advertise widely the selection committee process and to schedule public meetings for potential assessed businesses to provide input to the selection committee.

(g) The recommendations developed by the committee pursuant to subdivision (b) shall be reviewed and approved by the secretary.

(h) The selection committee process and report are exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1).

SEC. 8. Section 15372.70 of the Government Code is amended to read:

15372.70. (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) Twelve members, who are professionally active in the tourism industry, representing each of the 12 officially designated tourism regions and diverse elements of the industry, shall be appointed by the Governor. Appointed commissioners are not limited to assessed businesses.

(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) With the exception of the secretary, no commissioner shall serve for more than two consecutive terms.

(g) 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.

(h) 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 15372.102.

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

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

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



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

(m) 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.

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

(o) Commissioners shall comply with the requirements of the Political Reform Act of 1974. 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.

(p) 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).

(q) 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. 9. Section 15372.72 of the Government Code is amended to read:

15372.72. (a) The commission is a separate, independent California nonprofit mutual benefit corporation. Except as provided in Section 15372.73, the staff of the commission shall be employees solely of the commission, and the procedures adopted by the commission shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1).

(b) Not later than six months following the initial referendum, the commission shall adopt procedures concerning the operation of the commission in order to provide due process rights for assessed businesses.

(c) In the event that the commission fails to adopt the procedures described in subdivision (b) within the specified timeframe, the secretary shall adopt procedures for use by the commission until the commission adopts its own procedures. These procedures shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1), whether adopted by the commission or secretary.

SEC. 10. Section 15372.73 of the Government Code is amended to read:

15372.73. (a) The commission shall be administered by an executive director. That individual shall be a tourism industry marketing professional, recommended by a vote of the commissioners and approved by the Governor. The executive director shall serve at the pleasure of both the commissioners and the Governor.



(b) The executive director shall report to and receive overall guidance from the commission, and shall implement the commission's tourism marketing plan. The executive director shall report to the secretary for day-to-day managerial and financial responsibilities.

(c) The executive director shall serve simultaneously as the director of the office, with the title of Deputy Secretary of Tourism of the Trade and Commerce Agency, and that individual shall be an exempt employee, employed by the state. So long as the commission is in existence, the only director of the office shall be the executive director of the commission. Notwithstanding any other provision of law, the executive director may supervise both employees of the commission and employees of the office, notwithstanding the fact that the commission employees are employees solely of the commission.

(d) The salary and benefits of the executive director shall be determined by the commission, and approved by the secretary, based upon industry standards for a director of a marketing budget of similar size. The entire salary and all benefits of the executive director shall be paid from assessments.

SEC. 11. Section 15372.74 of the Government Code is amended to read:

15372.74. (a) (1) The commission shall annually provide to all assessed businesses a report on the activities and budget of the commission including, but not limited to, income and expenses, the fund balance, a summary of the tourism marketing plan, and a report of progress in achieving the goals set forth in the plan. The portions of the report that pertain to the commission's income and expenses and the fund balance, as well as those other portions that the commission may from time to time deem appropriate, shall be audited by independent accountants retained by the commission for this purpose.

(2) The commission's annual budget shall be subject to the review and approval of the secretary. However, any decision of the secretary related to the budget may be overridden by a vote of three-fifths or more of the commissioners then in office.

(b) The commission shall maintain a report on the percentage assessment allocation between industry categories and industry segments. The report shall also specify the reasons and methodology used for the allocations. This report shall be updated every time the assessment allocations are amended. The report shall be made available to any assessed business.

SEC. 12. Section 15372.75 of the Government Code is amended to read:

15372.75. (a) The commission shall annually prepare, or cause to be prepared, a written marketing plan. In developing the plan, the commission shall utilize, as appropriate, the advice and



recommendations of the industry marketing advisory committee or committees established pursuant to subdivision (a) of Section 15372.77. The commission may amend the plan at any commission meeting. All expenditures by the commission shall be consistent with the marketing plan.

(b) The plan shall promote travel to and within California, and shall include, but not be limited to, the following:

- (1) An evaluation of the previous year's budget and activities.
- (2) Review of California tourism trends, conditions, and opportunities.
- (3) Target audiences for tourism marketing expenditures.
- (4) Marketing strategies, objectives, and targets.
- (5) Budget for the current year.

(c) Before final adoption of the plan, the commission shall provide each known destination marketing organization in California notice of the availability of the proposed marketing plan and suitable opportunity, which may include public meetings, to review the plan and to comment upon it. The commission shall take into consideration any recommendations submitted by the destination marketing organizations, except that the final determination as to the nature, extent, and substance of the plan shall in all respects rest solely within the ultimate discretion of the commission, except as provided in subdivision (d).

(d) The final adoption of the plan shall be subject to the review and approval of the secretary. However, any decision of the secretary related to the plan may be overridden by a vote of three-fifths or more of the commissioners then in office.

SEC. 13. Section 15372.79 is added to the Government Code, to read:

15372.79. 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 who is not an assessed business. The contract shall provide that the voluntary assessment be 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. Notwithstanding the foregoing, the commission shall not enter into any contract for a voluntary assessment with a person whose primary



business is gaming, as defined in Chapter 10 (commencing with Section 330) of Title 9, Part 1 of the Penal Code.

SEC. 14. Section 15372.100 of the Government Code is amended to read:

15372.100. (a) The initial referendum shall cover, but not be limited to, the following subjects:

(1) The proposed assessment level, based upon specified assessment formulae, together with necessary information to enable each assessed business to determine what its individual assent would be.

(2) Election of commissioners.

(3) Whether to have an assessment.

(b) A referendum shall be called every two years, commencing on the second anniversary of the initial referendum.

(c) The first referendum following the initial referendum shall solely determine the new set of commissioners by adopted resolution. At that referendum, the assessment target shall remain at the same level as utilized in the initial referendum. The assessment formula shall remain the same and the commission shall continue its existence. As used in this article and Article 7 (commencing with Section 15372.105) “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).

(d) Commencing with the third referendum, the commission shall, by adopted resolution, 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; and termination 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 15372.66 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.

(e) The commission shall deliver to the secretary the resolution described in subdivision (b) or (c). The secretary shall call a referendum containing the information required by subdivision (b) or (c) plus any additional matters complying with the procedures of subdivision (b) of Section 15372.102.



(f) 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.

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

(h) The initial referendum shall, if possible, be held within 180 days of receipt by the Governor of the selection committee report, or, if not possible, as soon as practicable thereafter. The secretary shall call the referendum.

SEC. 15. Section 15372.101 of the Government Code is amended to read:

15372.101. (a) The costs of marketing and promoting the initial referendum shall be provided by private payments. The costs of the initial referendum shall be paid by the office. The office shall coordinate the referendum to ensure that it is unbiased and factually correct. In the event that the initial referendum fails in the first attempt at passage, subsequent attempts at passage of the initial referendum shall be permitted, except that the costs of conducting the subsequent attempts at passage, along with the costs of marketing and promoting those attempts at passage, shall be provided by private payments. Subsequent attempts at passage shall be conducted in the manner specified in this subdivision. In the event that the initial referendum passes, whether on the first attempt at passage or a subsequent attempt at passage, the private payers and the office shall be reimbursed for all of their respective initial referendum costs from assessments first received.

(b) The ongoing referendum costs shall be paid by the commission.

SEC. 16. Section 15372.104 of the Government Code is amended to read:

15372.104. (a) Each assessed business is entitled to a weighted vote in each referendum. In calculating weighted votes, each assessed business receives a vote equal to the relative assessment paid by that business. An assessed business paying nine hundred dollars (\$900) in annual assessments has three times the weighted vote of a business paying three hundred dollars (\$300). Weighted votes are used to determine all issues on the referendum. The initial referendum, and any referendum item to terminate the commission, must be approved by a majority of the weighted votes cast at the referendum. The amount of assessment and selection of commissioners is determined by the most weighted votes, whether or not there is a majority.

(b) For purposes of voting in any referendum, each assessed business is part of one industry category and one industry segment, and for voting purposes only, a business with revenue in more than



one industry category or industry segment shall only be included in the category and segment in which it earns the most gross revenue.

(c) Each assessed business is eligible to vote for each item on the referendum, except that an assessed business can only vote for commissioners representing its industry category, and industry segment formulae for its industry segment.

(d) A business is not eligible to vote unless it has paid all assessments and fines outstanding as of a date established by the secretary.

SEC. 17. Section 15372.105 of the Government Code is amended to read:

15372.105. (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 (c) of Section 15372.66. 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 15372.66. 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 15372.100. 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.

SEC. 18. Section 15372.106 of the Government Code is amended to read:

15372.106. The initial assessment level shall be the amount that the selection committee recommends in its report to the Governor pursuant to Section 15372.66, which may be less than twenty-five million dollars (\$25,000,000). This assessment level is a target, and shall serve as the basis for setting application of the assessment formulae, but the actual amount of collected assessments may be more or less than the assessment level.

SEC. 19. Section 15372.110 of the Government Code is amended to read:



15372.110. (a) The office shall develop a list of California businesses within each segment included within the report required by subdivision (b) of Section 15372.66, periodically updated. Other state agencies shall assist the office in obtaining the names and addresses of these businesses.

(b) The office shall mail to each business identified pursuant to subdivision (a) a form requesting information necessary to determine the assessment for that business. Any business failing to provide this information in a timely manner shall be assessed an amount determined by the secretary to represent the upper assessment level for that segment.

(c) The office, in consultation with the commission, shall establish by regulation the procedure for assessment collection.

SEC. 20. Section 15372.111 of the Government Code is amended to read:

15372.111. (a) Funding for the commission is a cooperative venture. Because of the benefits that accrue to the state and to its residents by virtue of having the travel and tourism industry participate cooperatively with the state for the purpose of effectively marketing travel and tourism to and within the state, it is the intent of the Legislature that the state shall be responsible for appropriating a minimum of seven million three hundred thousand dollars (\$7,300,000) each fiscal year for travel and tourism, and the industry shall be responsible for targeting the level of assessments for each fiscal year at the amount determined to be appropriate by the commission and approved by referendum. However, that assessment level shall ultimately reach at least twenty-five million dollars (\$25,000,000). The industry may terminate the commission by referendum at any time, including during the initial four years, if the state fails to appropriate seven million three hundred thousand dollars (\$7,300,000) in any fiscal year, and the state may decide not to appropriate funding in the event that the commission fails in any fiscal year to target its annual assessment level at or above the level set for the initial referendum. Termination of the commission by the industry shall require an adopted resolution of the commission to either include this issue in a regularly scheduled referendum, or to call a special referendum to decide the issue.

(b) The assessed funds shall be audited annually.

(c) The assessed funds shall be under the control of the commission, which shall spend the funds consistent with commission policies and the tourism marketing plan. The state shall have no interest in the fund except the general state interest that the state has in nonprofit corporations.

SEC. 21. Section 15372.118 of the Government Code is amended to read:

15372.118. A business is exempt from the assessments provided for in this chapter if 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.

SEC. 22. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

No reimbursement is required by provisions of this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 24. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

