

## CHAPTER 72

**AN ACT** providing "Phase 2 Tourism Funding" to tourism and improvement development districts, amending and supplementing P.L.1992, c.165.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1992, c.165 (C.40:54D-2) is amended to read as follows:

C.40:54D-2 Findings, determinations relative to tourism improvement and development.

2. The Legislature finds and determines:

- a. The State of New Jersey contains many unique natural, recreational, and economic resources that are enjoyed not only by the citizens of the State but also by millions of visitors from all over the United States and the world, which in turn results in a multi-billion dollar tourism industry that is crucial to the economic well-being of the State.

- b. The provision of appropriate public facilities and improvements necessary to promote and sustain tourism is especially difficult for public entities located in sixth class counties of this State. In those counties a relatively small permanent population combines with a relative lack of a diversification in the economic base to present special obstacles for public entities which seek to undertake and fund tourism facilities and improvements without damaging the economic prosperity of the locality by imposing onerous taxes on permanent residents or businesses.

- c. The creation of tourism improvement and development districts may assist municipalities in those counties in promoting economic growth and employment related to a tourism-economy and that municipalities in counties of the sixth class should be encouraged to create tourism improvement and development districts to finance the acquisition, maintenance, operation and support of convention center facilities and to promote tourism in order to enhance the local tourism business climates.

- d. It is in the public interest to encourage these municipalities in counties of the sixth class to seek regional solutions to common problems related to economic prosperity of this State, and to enhance the prosperity of those municipalities by the adoption of appropriate ordinances to assess, levy and collect taxes upon receipts from certain sales and services, and to impose certain municipal fees. These special public finance measures which are not generally available to other local units of the State, are appropriate to address the particular economic conditions of sixth class counties, and are not necessary or appropriate in areas with a larger population base and more diversified economic structure, which are not so heavily affected by the seasonal fluctuations of a tourism based economy.

- e. The extension of the tourism development fees provided by the amendatory and supplementary act, P.L.2002, c.72 is intended to serve as a tool for the tourism improvement and development authority to attract visitors and tourists to the State. The municipalities that constitute the tourism improvement and development district will establish the amounts of the fees, in their sole discretion, with no fee schedule set by the State.

2. Section 3 of P.L.1992, c.165 (C.40:54D-3) is amended to read as follows:

C.40:54D-3 Definitions relative to tourism improvement and development.

3. As used in this act:

"Authority" means a tourism improvement and development authority created pursuant to section 18 of this act, P.L.1992, c.165 (C.40:54D-18).

"Beach operation offset payment " means a payment made by an authority to municipalities in its district for tourism development activities related to operating and maintaining public beaches within a zone to seaward of a line of demarcation located not more than 1,000 feet from the mean high water line.

"Bond" means any bond or note issued by an authority pursuant to the provisions of this act.

"Commissioner" means the Commissioner of the Department of Commerce and Economic Development.

"Construction" means the planning, designing, construction, reconstruction, rehabilitation, replacement, repair, extension, enlargement, improvement and betterment of a project, and includes the demolition, clearance and removal of buildings or structures on land acquired, held, leased or used for a project.

"Convention center facility" means any convention hall or center or like structure or building, and shall include all facilities, including commercial, office, community service, parking facilities and all property rights, easements and interests, and other facilities constructed for the accommodation and entertainment of tourists and visitors, constructed in conjunction with a convention center facility and forming reasonable appurtenances thereto but does not mean the Wildwood convention center facility as defined in this section.

"Tourism project" means the convention center facility or outdoor special events arena, or both, located in the territorial limits of the district, and any costs associated therewith but does not mean the Wildwood convention center facility as defined in this section.

"Cost" means all or any part of the expenses incurred in connection with the acquisition, construction and maintenance of any real property, lands, structures, real or personal property rights, rights-of-way, franchises, easements, and interests acquired or used for a project; any financing charges and reserves for the payment of principal and interest on bonds or notes; the expenses of engineering, appraisal, architectural, accounting, financial and legal services; and other expenses as may be necessary or incident to the acquisition, construction and maintenance of a project, the financing thereof and the placing of the project into operation.

"County" means a county of the sixth class.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Fund" means a Reserve Fund created pursuant to section 13 of P.L.1992, c.165 (C.40:54D-13).

"Outdoor special events arena" means a facility or structure for the holding outdoors of public events, entertainments, sporting events, concerts or similar activities, and shall include all facilities, property rights and interests, and all appurtenances reasonably related thereto, constructed for the accommodation and entertainment of tourists and visitors.

"Participant amusement" means a sporting activity or amusement the charge for which is exempt from taxation under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) by virtue of the participation of the patron in the activity or amusement, such as bowling alleys, swimming pools, water slides, miniature golf, boardwalk or carnival games and amusements, baseball batting cages, tennis courts, and fishing and sightseeing boats.

"Predominantly tourism related retail receipts" means:

a. The rent for every occupancy of a room or rooms in a hotel subject to taxation pursuant to subsection (d) of section 3 of the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-3);

b. Receipts from the sale of food and drink in or by restaurants, taverns, or other establishments in the district, or by caterers, including in the amount of such receipt any cover, minimum, entertainment or other charge made to patrons or customers, subject to taxation pursuant to subsection © of section 3 of the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-3) but excluding receipts from sales of food and beverages sold through coin operated vending machines; and

c. Admissions charges to or the use of any place of amusement or of any roof garden, cabaret or similar place, subject to taxation pursuant to subsection (e) of section 3 of the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-3).

"Purchaser" means any person purchasing or hiring property or services from another person, the receipts or charges from which are taxable by an ordinance authorized under P.L.1992, c.165 (C.40:54D-1 et seq.).

"Sports authority" means the New Jersey Sports and Exposition Authority established pursuant to P.L.1971, c.137 (C.5:10-1 et seq.).

"Tourism" means activities involved in providing and marketing services and products, including accommodations, for nonresidents and residents who travel to and in New Jersey for recreation and pleasure.

"Tourism assessment" means an assessment on the rent for every occupancy of a room or rooms in a hotel subject to taxation pursuant to subsection (d) of section 3 of the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-3).

"Tourism development activities" include operations of the authority to carry out its statutory duty to promote, advertise and market the district, including making beach operation offset payments.

"Tourism development fee" means a fee imposed by ordinance pursuant to section 15 of P.L.1992, c.165 (C.40:54D-15).

"Tourism improvement and development district" or "district" means an area within two or more contiguous municipalities within a county of the sixth class established pursuant to ordinance enacted by those municipalities, for the purposes of promoting the acquisition, construction, maintenance, operation and support of a tourism project, and to devote the revenue and the proceeds from taxes upon predominantly tourism related retail receipts and from tourism development fees to the purposes as herein defined.

"Tourist industry" means the industry consisting of private and public organizations which directly or indirectly provide services and products to nonresidents and residents who travel to and in New Jersey for recreation and pleasure.

"Tourism lodging" means any dwelling unit, other than a dwelling unit in a hotel the rent for which is subject to taxation under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), rented with or without a lease, whether rented by the owner or by an agent for the owner: (1) within a multiple unit building of more than four units, which building is (a) under single ownership without regard to the form of ownership, or (b) organized as condominiums or cooperatives; or (2) in a group of buildings of more than four units, which group of buildings are (a) under single ownership without regard to the form of ownership, or (b) organized as condominiums or cooperatives.

"Vendor" means a person selling or hiring property or services to another person, the receipts or charges from which are taxable by an ordinance authorized under P.L.1992, c.165 (C.40:54D-1 et seq.).

"Wildwood convention center facility" means the project authorized by paragraph (12) of subsection a. of section 6 of P.L.1971, c.137 (C.5:10-6).

3. Section 4 of P.L.1992, c.165 (C.40:54D-4) is amended to read as follows:

C.40:54D-4 Tourism improvement and development districts.

4. a. Two or more contiguous municipalities located in a county of the sixth class may, by ordinances of a substantially similar nature, create a tourism improvement and development district for the purpose of increasing public revenue and to levy taxes upon predominantly tourism related retail receipts at a rate not to exceed 2 percent, and to levy a tourism assessment at a rate of 1.85 percent, and to devote the proceeds therefrom for the purposes herein described. Municipal ordinances so adopted shall not affect which retail receipts are subject to the "Sales and Use Tax Act."

For the same purposes, the ordinances establishing the district shall also provide for the imposition of tourism development fees authorized pursuant to section 15 of P.L.1992, c.165 (C.40:54D-15). The taxes on predominantly tourism related retail receipts and tourism development fees so imposed shall be uniform throughout the district.

b. Notwithstanding any other law to the contrary, ordinances so adopted shall not be subject to referenda, and shall not be altered or repealed, except by mutual action of all such municipalities and then only upon the written approval of the State Treasurer and, so long as the sports authority shall own and be responsible for the construction and operation of the Wildwood convention center facility, upon the written approval of the sports authority. Each municipality which enters into the creation of the district shall covenant that the ordinance, or a condition imposed by statute that each municipality is required to meet, shall not be altered or repealed in such manner as to affect any bonds or other obligations pertaining to projects within the district which are outstanding. Any alteration or repeal, or attempted alteration or repeal, in violation of this subsection, whether before or after the effective date of P.L.1997, c.273 (C.40:54D-25.1 et al.) shall be null and void.

c. The district shall comprise all territory within the boundaries of the municipalities which create or enter into the district.

d. A contiguous municipality located in a county of the sixth class may, by such an ordinance, and with the mutual consent of the governing bodies of the municipalities which created the district, enter into the district so created after the date of the district's creation.

e. A copy of an ordinance adopted pursuant to this section shall be transmitted upon adoption or amendment to the State Treasurer. An ordinance so adopted or any amendment thereto shall provide that the retail receipts tax provisions of the ordinance or any amendment to the retail receipts tax provisions shall take effect on the first day of the first full month occurring 90 days after the date of transmittal to the State Treasurer.

4. Section 6 of P.L.1992, c.165 (C.40:54D-6) is amended to read as follows:

C.40:54D-6 Collection, administration of tax, assessment; determination, certification of revenues.

6. a. The director shall collect and administer any tax or tourism assessment imposed pursuant to the provisions of P.L.1992, c.165 (C.40:54D-1 et seq.) notwithstanding the provisions of any other law or ordinance to the contrary. In carrying out the provisions of P.L.1992, c.165 (C.40:54D-1 et seq.) the director shall have all the powers granted in P.L.1996; c.30 (C.54:32B-1 et seq.).

b. The director shall determine and certify to the State Treasurer on a monthly basis the amount of revenues collected in a district on predominantly tourism related retail receipts pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.). The State Treasurer, upon the certification of the director and upon the warrant of the State Comptroller, shall pay and distribute on a monthly basis to the fund established pursuant to section 13 of P.L.1992, c.165 (C.40:54D-13) the amount so determined and certified.

c. The director shall determine and certify to the State Treasurer on a monthly basis the amount of revenues collected in a district as tourism assessments pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.). The State Treasurer, upon the certification of the director and upon the warrant of the State Comptroller, shall pay and distribute on a monthly basis to the fund established pursuant to section 9 of P.L.2002, c.72 (C.40:54D-14.1) the amount so determined and certified.

5. Section 7 of P.L.1992, c.165 (C.40:54D-7) is amended to read as follows:

C.40:54D-7 Contents of ordinance.

7. An ordinance imposing a tax upon predominantly tourism related retail receipts or tourism assessments adopted pursuant to this act shall contain the following provisions:

- a. All taxes or assessments imposed by the ordinance shall be paid by the purchaser;
- b. A vendor shall not assume or absorb any tax or assessment imposed by the ordinance;
- c. A vendor shall not in any manner advertise or represent that a tax or assessment imposed by the ordinance will be assumed or absorbed by the vendor;
- d. Each assumption or absorption by a vendor of the tax or assessment shall be deemed a separate offense and each representation of advertisement by a vendor for each day the representation or advertisement continues shall be deemed a separate offense; and
- e. Penalties as fixed in the ordinance, for violation of the foregoing provisions.

6. Section 9 of P.L.1992, c.165 (C.40:54D-9) is amended to read as follows:

C.40:54D-9 Forwarding of tax, assessment collected, filing returns.

9. a. A vendor required to collect the tax upon predominantly tourism related retail receipts or tourism assessment imposed pursuant to this act shall on or before the dates required pursuant to section 17 of P.L.1966, c.30 (C.54:32B-17), forward to the director the tax and assessments collected in the preceding month and make and file a return for the preceding month with the director on any form and containing any information as the Director of the Division of Taxation in the Department of the Treasury shall prescribe by rule or regulation as necessary to determine liability for the tax and assessment in the preceding month during which the person was required to collect the tax.

b. The director may permit or require returns to be made covering other periods and upon any dates as the director may specify. In addition, the director may require payments of tax and

assessment liability at any intervals and based upon any classifications as the director may designate. In prescribing any other periods to be covered by the return or intervals or classifications for payment of tax and assessment liability, the director may take into account the dollar volume of tax and assessment involved as well as the need for ensuring the prompt and orderly collection of the tax imposed.

c. The director may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

d. The director shall inform the authority for each month in which this tax and assessment is collected and returns made of the amount so collected in each month.

7. Section 10 of P.L.1992, c.165 (C.40:54D-10) is amended to read as follows:

C.40:54D-10 "State Tax Uniform Procedure Law" applicable.

10. The tourism assessment and the tax imposed upon predominantly tourism related retail receipts pursuant to this act shall be governed by the provisions of the "State Tax Uniform Procedure Law," R.S.54:48-1 et seq.

8. Section 12 of P.L.1992, c.165 (C.40:54D-12) is amended to read as follows:

C.40:54D-12 Revenues deposited in funds.

12. a. All revenues from a tax on predominantly tourism related retail receipts collected by the director under an ordinance adopted and authorized pursuant to this act, P.L.1992, c.165 (C.40:54D-1 et seq.), shall be retained by the State Treasurer for deposit in the fund established pursuant to section 13 of this act, P.L.1992, c.165 (C.40:54D-13), to be used and distributed according to P.L.1992, c.165 (C.40:54D-1 et seq.).

b. All revenues from tourism assessments collected by the director under an ordinance adopted and authorized pursuant to this act, P.L.1992, c.165 (C.40:54D-1 et seq.), shall be retained by the State Treasurer for deposit in the fund established pursuant to section 9 of P.L.2002, c.72 (C.40:54D-14.1) to be used and distributed according to the terms of that section.

c. The State Treasurer may deduct from amounts so retained prior to deposit in the funds an amount equal to that necessary to compensate the Department of the Treasury for costs actually incurred by that department in administering the provisions of this act. The State Treasurer shall annually provide the authority to which the funds pertain with a written account of the amounts so deducted and of the costs so incurred in the previous fiscal year. Amounts deducted by the State Treasurer shall be retained by the Department of the Treasury and used exclusively for costs so incurred.

C.40:54D-14.1 Tourism assessment funds; use.

9. a. There is created for a tourism improvement and development district established pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.), a tourism assessment fund to be held by the State Treasurer, but not to exist in the State Treasury, to be the repository for monies paid to the State Treasurer pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.) representing net collections of the tourism assessments.

b. The revenues deposited by the State Treasurer in the tourism assessment fund shall be used by the authority first to make payment for services provided by a municipality in which a tourism project is located to that extent that those payments are required by an agreement entered into on or before February 8, 2000. The remaining tourism assessments collected shall be used for a beach operation offset payment and the balance of the funds shall be used by the authority for advertising, promotion and other tourism development activities as approved and budgeted by the authority.

c. The beach operation offset payment payable within the district in each calendar year shall be equal to the permitted percentage of 50% of the amount deposited by the State Treasurer in the tourism assessment fund that remains after payment for the calendar year for services provided by a municipality in which a tourism project is located to that extent that those

payments are required by an agreement entered into on or before February 8, 2000. Each municipality within the district shall receive an equal share of the beach operations offset payment payable in the district in which the municipality is located; provided however, that the share of a municipality that may not receive a payment due to the provisions of subsection d. of this section shall be used by the authority for advertising, promotion and other tourism development activities as approved and budgeted by the authority.

d. No beach operation offset payments may be made to a municipality in any year in which that municipality imposes beach fees, beach taxes or similar user fees, or "beach tag" type fees for access to, or the use of, a beach within the boundaries of that municipality.

e. For the purposes of this section, "permitted percentage" means, in the initial year after the implementation of the amendments to P.L.1992, c.165 (C.40:54D-1 et seq.) pursuant to P.L.2002, c.72 (C.40:54D-14.1), 100%. The permitted percentage shall be determined in the second year after the implementation of the amendments to P.L.1992, c.165 (C.40:54D-1 et seq.) pursuant to P.L.2002, c.72 (C.40:54D-14.1) as the ratio of total of tourism development fees collected in that district in that year to 50% of the tourism assessments remaining after payments of services provided by a municipality in which a tourism project is located to the extent that those payments are required by an agreement entered into on or before February 8, 2000, expressed as a percentage, but not to exceed 100%. That permitted percentage of tourism development fees collected shall be used to calculate the beach operation offset payment to municipalities in years two through six, subject to the other restrictions of this section. The permitted percentage shall be recalculated for each fifth year following a calculation or recalculation year by comparing the average of the tourism development fees collected in the previous five year period to the average of 50% of the tourism assessments remaining after payments of services provided by a municipality in which a tourism project is located, to that extent that those payments are required by an agreement entered into on or before February 8, 2000, in the previous five year period.

10. Section 15 of P.L.1992, c.165 (C.40:54D-15) is amended to read as follows:

C.40:54D-15 Imposition of tourism development fee.

15. Ordinances adopted pursuant to this act, P.L.1992, c.165 (C.40:54D-1 et seq.) shall impose a tourism development fee. The ordinances imposing the fee shall set forth the method for the calculation thereof which shall be similar to that used for mercantile licenses and other such fees as established by the municipalities.

A business paying the tourism development fee or tourism assessment shall be exempt from any future room taxes, tourism taxes, beach fees, or other similar taxes imposed by a county or the State of New Jersey on tourism related business. The fee shall be uniform throughout the district and shall apply to:

a. all persons making sales of tangible personal property or services, the receipts from which are subject to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), not required to collect a tax on predominantly tourism related retail receipts;

b. all persons making charges for participant amusements;

c. all persons operating businesses that charge for parking, garaging or storing motor vehicles;

d. all persons maintaining or operating coin-operated vending machines within the district, for the machines within the district, regardless of the types of commodities sold through the machines;

e. all persons making sales of tangible personal property or services, the receipts from which are subject to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) and who are required to collect a tax on predominately tourism related retail receipts, but only to the extent that the amount of tax on those receipts collected in a year by the person is less than the amount of the tourism development fee for that year, provided however that persons making sales of food and drink subject to taxation pursuant to subsection (c) of section 3 of P.L.1966, c.30 (C.54:32B-3) shall pay a tourism development fee in the amount determined in the sole discretion of the municipality by ordinance, which shall be in addition to any amount of the tax

on predominantly tourism related retail receipts; and

f. all persons providing tourism lodging, who shall pay a tourism development fee in an amount determined in the sole discretion of the municipality by ordinance regardless of whether those sales are otherwise subject to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.). If the lodging is rented by an agent on behalf of the owner, the agent shall retain the amount of the fee for each unit of lodging from the amount or amounts of rent first collected on behalf of the owner on that unit in a year, and forward the amount or amounts on behalf of the person providing tourism lodging pursuant to the requirements of section 17 of P.L.1992, c.165 (C.40:54D-17).

A person shall be exempt from payment of a tourism development fee for a year if that person is a vendor required to collect the tax upon predominantly tourism related retail receipts under an ordinance authorized under this act, P.L.1992, c.165 (C.40:54D-1 et seq.), in an amount equal to the amount of tax so collected in that year, except as provided in subsection e.

A person claiming any exemption for an amount of fee otherwise required by this section by reason of the collection of amounts of tax on predominately tourism related retail receipts is deemed to have consented to the release of information concerning that person's tax on predominately tourism related retail receipts collections for the fee period sufficient, as determined by the director, to verify the claim for exemption. The municipality shall provide safeguards which restrict the use or disclosure of any such information provided to purposes directly connected with the administration of the fee.

A municipality may, at any time, notwithstanding the approval provisions of subsection b. of section 4 of P.L.1992 c.165 (C.40:54D-4), adjust by municipal ordinance, otherwise in compliance with the requirements of subsection b. of section 4 of P.L.1992 c.165 (C.40:54D-4), the schedule of tourism development fees to reflect changes in the funds available for beach operation offset payments so as to maximize the beach operation offset payments that the municipalities can receive pursuant to the limitations of subsection e. of section 9 of P.L.2002, c.72 (C.40:54D-14.1).

11. Section 17 of P.L.1992, c.165 (C.40:54D-17) is amended to read as follows:

C.40:54D-17 Remitting, reporting of fees paid, appropriation to authority.

17. a. All tourism development fees imposed by ordinance pursuant to section 15 of this act, P.L.1992, c.165 (C.40:54D-15), shall be paid to the municipality by the person making the charge that subjects the person or business to imposition of the fee or, in the case of an agent collecting rents on tourism lodging, by the agent making the collection on behalf of the person providing tourism lodging. The fees shall be remitted to the chief fiscal officer of the municipality, and shall be reported on such forms and paid at such times as may be prescribed by ordinance. The ordinance shall provide for the penalties and interest to be paid in the event of delinquency in payment of fees.

b. The amount of all fees paid to a municipality pursuant to this section shall be appropriated annually to the authority established pursuant to section 18 of this act, P.L.1992, c.165 (C.40:54D-18), to be used by the authority to develop, support, promote and advertise events in the district during all months of the year and to enhance the public awareness of those events promoted in the district.

C.40:54D-21.1 Entrance into a marketing partnership; qualified business, authority.

12. a. A qualified business outside of the district may enter into a marketing partnership with the authority and participate in events and any housing assignment programs or other services or programs administered by an authority, pursuant to this section.

b. An authority may establish and enter into marketing partnership contracts with a qualified business outside the district for participation in events or other services or programs administered by the authority. A qualified business electing to participate in those services or programs shall enter into a marketing partnership contract with the authority. Under the contract the authority shall agree to provide the business with all the rights and privileges applicable to that type of business located within the district, and the business shall agree to pay

directly to the authority an amount equal to the tourism development fees and tourism assessments payable by that type of business as if located within the district.

c. For the purposes of this section, "qualified business" means a hotel, motel or other business collecting receipts, sales or charges subject to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

13. This act shall take effect immediately.

Approved August 14, 2002.