

BILL ANALYSIS

C.S.H.B. 3095
By: Strama
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties see value in creating an incentive for venues to book more live music, thus contributing to the state's economy and culture. C.S.H.B. 3095 seeks to create that incentive by imposing a mixed beverages tax on venues holding a live music presenter permit, as established by the bill, that is less than that imposed on other applicable permittees, provided that those venues present live music five or more times a week during at least 45 weeks of the 52 weeks preceding the permit application.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 3095 amends the Tax Code to impose a tax at the rate of 10 percent on the gross receipts of a permittee classified as a live music presenter received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the live music presenter. The bill authorizes a permittee that is a bar, nightclub, or restaurant to submit an application to the comptroller of public accounts to request to be classified as a live music presenter but establishes that concert halls, music halls, opera halls, auditoriums, performing arts centers, sexually oriented businesses, stadiums, and venues that are built primarily or exclusively for the performance of live music are ineligible for such classification. The bill requires an initial application to include an application fee in an amount to be determined by the comptroller and a detailed description of the live music events hosted by the applicant in the year preceding the date of the application.

C.S.H.B. 3095 requires the comptroller, in conjunction with the Texas Music Office in the office of the governor, to evaluate each initial application by considering any factors the comptroller and office consider necessary and that the comptroller prescribes by rule. The bill requires the factors to include a requirement that the applicant have hosted live music events open to the general public at least five nights a week in at least 45 of the 52 weeks preceding the date of the application.

C.S.H.B. 3095 establishes that an applicant that is classified as a live music presenter retains that classification until the first anniversary of the date of classification and authorizes an applicant to apply to renew the classification. The bill requires the renewal application to include the fee and information required of the initial application, a description of the estimated tax savings achieved by the applicant as a result of the reduced tax rate, and a description of the expenditures made by the applicant during the preceding 12-month period related to live music events.

C.S.H.B. 3095 requires the comptroller, in conjunction with the office, to evaluate each renewal application and authorizes the comptroller to renew a classification only on the comptroller's

determination that the applicant continues to comply with the requirements to receive that classification and has used its tax savings during the preceding 12 months on expenditures related to expanding or improving the applicant's ability to present live music. The bill requires the comptroller by rule, after consulting with the office, to prescribe the manner in which an applicant must prove compliance with regard to the applicant's use of tax savings, including the manner in which the applicant will estimate the tax savings amount. The bill prohibits a permittee that was classified as a live music presenter at any time during the preceding 12-month period from filing an initial application but authorizes such a permittee to file a renewal application. The bill specifies that the expenditures related to expanding or improving the ability to present live music include expenditures for items related to the performance of live music that are eligible for a certain sales and use tax exemption for producers of audio recordings, artist and technician compensation, sound and lighting system equipment and training, membership in live music-related trade associations or groups, insurance on music-related equipment, labor related to music-related equipment or materials, including sound mitigation construction, and any other expenditure prescribed by the comptroller by rule after consulting with the office.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3095 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter A, Chapter 183, Tax Code, is amended by adding Section 183.002 to read as follows:

Sec. 183.002. LIVE MUSIC PRESENTERS. (a) In this section:

(1) "Bar" means a retail business establishment the primary purpose of which is the sale of alcoholic beverages for on-premises consumption.

(2) "Nightclub" means a retail business establishment the primary purpose of which is to provide a forum for dancing where alcoholic beverages are sold for on-premises consumption. The term includes a dance hall where alcoholic beverages are sold for on-premises consumption.

(3) "Office" means the Texas Music Office in the office of the governor.

(4) "Restaurant" means a place where food is sold for on-premises consumption.

(b) A permittee that is a bar, nightclub, or restaurant may submit an application to the comptroller to request to be classified as a live music presenter. Concert halls, music halls, opera halls, auditoriums, performing arts centers, and other venues that are built primarily or exclusively for the

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 183, Tax Code, is amended by adding Section 183.002 to read as follows:

Sec. 183.002. LIVE MUSIC PRESENTERS. (a) In this section:

(1) "Bar" means a retail business establishment the primary purpose of which is the sale of alcoholic beverages for on-premises consumption.

(2) "Nightclub" means a retail business establishment the primary purpose of which is to provide a forum for dancing where alcoholic beverages are sold for on-premises consumption. The term includes a dance hall where alcoholic beverages are sold for on-premises consumption.

(3) "Office" means the Texas Music Office in the office of the governor.

(4) "Restaurant" means a place where food is sold for on-premises consumption.

(b) A permittee that is a bar, nightclub, or restaurant may submit an application to the comptroller to request to be classified as a live music presenter. Concert halls, music halls, opera halls, auditoriums, performing arts centers, **sexually oriented businesses, stadiums, and** venues that are built primarily

performance of live music are not eligible to be classified as live music presenters for purposes of this section.

(c) An initial application to be classified as a live music presenter must include:

(1) an application fee in an amount to be determined by the comptroller; and

(2) a detailed description of the live music events hosted by the applicant in the year preceding the date of the application.

(d) The comptroller, in conjunction with the office, shall evaluate each initial application under this section by considering any factors that the comptroller and office consider necessary and that the comptroller prescribes by rule. The factors must include a requirement that the applicant have hosted live music events open to the general public at least **four** nights a week in at least 45 of the 52 weeks preceding the date of the application.

(e) An applicant that is classified as a live music presenter retains that classification until the first anniversary of the date of classification.

(f) An applicant may apply to renew a classification as a live music presenter. The application must include:

(1) the fee and information required under Subsection (c);

(2) a description of the estimated tax savings achieved by the applicant as a result of the reduced tax rate; and

(3) a description of expenditures made by the applicant during the preceding 12-month period related to live music events.

(g) The comptroller, in conjunction with the office, shall evaluate each application to renew a classification as a live music presenter. The comptroller may renew a classification only if the comptroller determines that the applicant:

(1) continues to comply with the requirements to receive that classification under Subsection (d); and

(2) has used its tax savings during the preceding 12 months under this section on expenditures related to expanding or improving the applicant's ability to present live music.

(h) The comptroller by rule, after consulting with the office, shall prescribe the manner in which an applicant must prove compliance with Subsection (g)(2), including the manner in which the

or exclusively for the performance of live music are not eligible to be classified as live music presenters for purposes of this section.

(c) An initial application to be classified as a live music presenter must include:

(1) an application fee in an amount to be determined by the comptroller; and

(2) a detailed description of the live music events hosted by the applicant in the year preceding the date of the application.

(d) The comptroller, in conjunction with the office, shall evaluate each initial application under this section by considering any factors that the comptroller and office consider necessary and that the comptroller prescribes by rule. The factors must include a requirement that the applicant have hosted live music events open to the general public at least **five** nights a week in at least 45 of the 52 weeks preceding the date of the application.

(e) An applicant that is classified as a live music presenter retains that classification until the first anniversary of the date of classification.

(f) An applicant may apply to renew a classification as a live music presenter. The application must include:

(1) the fee and information required under Subsection (c);

(2) a description of the estimated tax savings achieved by the applicant as a result of the reduced tax rate; and

(3) a description of expenditures made by the applicant during the preceding 12-month period related to live music events.

(g) The comptroller, in conjunction with the office, shall evaluate each application to renew a classification as a live music presenter. The comptroller may renew a classification only if the comptroller determines that the applicant:

(1) continues to comply with the requirements to receive that classification under Subsection (d); and

(2) has used its tax savings during the preceding 12 months under this section on expenditures related to expanding or improving the applicant's ability to present live music.

(h) The comptroller by rule, after consulting with the office, shall prescribe the manner in which an applicant must prove compliance with Subsection (g)(2), including the manner in which the applicant will estimate the

applicant will estimate the amount of tax savings.

(i) A permittee that was classified as a live music presenter at any time during the preceding 12-month period may not file an initial application under Subsection (c) but may file a renewal application under Subsection (f).

(j) For purposes of this section, expenditures related to expanding or improving the ability to present live music include expenditures for:

(1) items related to the performance of live music that are eligible for the sales and use tax exemption authorized by Section 151.3185(a)(2)(A) for producers of audio recordings;

(2) artist and technician compensation;

(3) sound and lighting system equipment and training;

(4) membership in live music-related trade associations or groups;

(5) insurance on music-related equipment;

(6) labor related to music-related equipment or materials, including construction related to sound mitigation; and

(7) any other expenditure prescribed by the comptroller by rule after consulting with the office.

SECTION 2. Section 183.021, Tax Code, is amended to read as follows:

Sec. 183.021. TAX IMPOSED ON MIXED BEVERAGES. (a) Except as provided by Subsection (b), a [A] tax at the rate of 14 percent is imposed on the gross receipts of a permittee received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.

(b) A tax at the rate of seven percent is imposed on the gross receipts of a permittee classified as a live music presenter under Section 183.002 received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the live music presenter.

amount of tax savings.

(i) A permittee that was classified as a live music presenter at any time during the preceding 12-month period may not file an initial application under Subsection (c) but may file a renewal application under Subsection (f).

(j) For purposes of this section, expenditures related to expanding or improving the ability to present live music include expenditures for:

(1) items related to the performance of live music that are eligible for the sales and use tax exemption authorized by Section 151.3185(a)(2)(A) for producers of audio recordings;

(2) artist and technician compensation;

(3) sound and lighting system equipment and training;

(4) membership in live music-related trade associations or groups;

(5) insurance on music-related equipment;

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(b) A tax at the rate of 10 percent is imposed on the gross receipts of a permittee classified as a live music presenter under Section 183.002 received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the live music presenter.

SECTION 3. This Act takes effect
September 1, 2013.

SECTION 3. Same as introduced version.