LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 25, 2017

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB2445** by Stucky (Relating to the use of municipal hotel occupancy tax revenue in certain municipalities.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2445, As Passed 2nd House: a negative impact of ($460,000) through the biennium ending August 31, 2019.

Additionally, there would be a negative impact to General Revenue Related Funds of ($44,840,000) through the biennium ending August 31, 2021. There would be a revenue gain to General Revenue Dedicated accounts of ($34,000,000) through the biennium ending August 31, 2021.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	$0
2019	($460,000)
2020	($20,720,000)
2021	($24,120,000)
2022	($27,840,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from *General Revenue Fund* 1	Probable Revenue Gain from *Coastal Erosion Response Account*
2018	$0	$0
2019	($460,000)	$0
2020	($20,720,000)	$16,610,000
2021	($24,120,000)	$17,390,000
2022	($27,840,000)	$18,190,000

Fiscal Analysis

The bill would amend Chapter 351 of the Tax Code, regarding municipal hotel occupancy taxes, to provide for reenactment of Section 351.101(a) and for substantive amendment of Section

351.101(a)(7) to authorize a municipality that contains an intersection of Interstates 35E and 35W and at least two public universities to use municipal hotel occupancy taxes for the promotion of tourism by the enhancement and upgrading of an existing sports facility or field.

Chapter 334, Local Government Code, regarding sports and community venues, would be amended to define "active transportation" and to amend the definition of "venue" to include: 1) an area or facility for active transportation use that is part of a municipal parks and recreation system, and 2) an airport facility located in a municipality located on the international border. Section 334.1015 would be amended to apply Subchapter E to a municipality located on the international border, which would allow such a municipality to finance a venue project that is, or is a part of, a municipal parks and recreation system, with a tax on short-term motor vehicle rentals. Section 334.2515 would be amended to exclude 1) a tourist development area, and 2) an airport facility located in a municipality located on the international border from the authorization of hotel occupancy tax at rate up to two percent provided under Subchapter H.

Section 351.005, Tax Code, would be amended to require a municipality that uses municipal hotel tax revenue for an electronic tax administration system to allow a person who collects and remits the tax to retain up to one percent of that tax revenue as reimbursement for the cost of collecting the tax. Section 351.1012(a) would be amended to limit the amount of this municipal tax that can be spent on a tax administration system, in each year, to the lesser of one percent or $75,000, and would prohibit a municipality from using revenue authorized for a tax administration system to conduct an audit.

Section 351.101(g), Tax Code, would be amended regarding reporting requirements related to grants of municipal hotel tax revenue for the promotion of the arts. A new Subsection (g-1) would be added to provide that a person that receives funds for promotion of the arts directly through a grant from a municipality may not be required by the municipality to waive a right guaranteed by law to the person or to enter into an agreement with another person.

A new Subsection (o) would be added to Section 351.101 to authorize a municipality that (1) has a population of not more than 10,000; (2) contains an outdoor gear and sporting goods retailer with retail space larger than 175,000 square feet; and (3) hosts an annual wiener dog race, to use municipal hotel occupancy taxes to promote tourism and the convention and hotel industry by constructing, operating or expanding a sporting related facility or field owned by the municipality if the majority of the events at the facility or field are directly related to a sporting event in which the majority of participants are tourists who substantially increase economic activity at hotels in the municipality. Limitations would be provided on any reduction in the allocation of municipal hotel occupancy tax revenue related to advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity.

Section 351.102, Tax Code, regarding the pledge of municipal hotel tax revenue to certain bonds and entitlement of certain municipalities to rebates of state tax revenue associated with certain hotel projects, would be amended to expand the set of eligible municipalities and to add a condition for eligibility for rebates of state tax.

Subsection (c) of Section 351.102 would be amended to provide that a municipality described by Subsection (e) is not entitled to receive funds from a project under the subsection unless the municipality has pledged the municipal hotel tax revenue derived from the project for the payment of bonds or other obligations issued or incurred for the project.

A new Subsection (e) would be added to Section 351.102 to extend the application of the section

to:
1. a municipality with a population of at least 110,000 but not more than 135,000 at least part of which is located in a county with a population of not more than 135,000;
2. a municipality with a population of at least 9,000 but not more than 10,000 that is located in two counties, each of which has a population of at least 662,000 and a southern border with a county with a population of 2.3 million or more;
3. municipality with a population of at least 200,000 but not more than 300,000 that contains a component institution of the Texas Tech University System;
4. a municipality with a population of at least 95,000 that borders Lake Lewisville;
5. a municipality that contains a portion of Cedar Hill State Park; has a population of more than 45,000; is located in two counties, one of which has a population of more than two million and one of which has a population of more than 149,000; and has adopted a capital improvement plan for the construction or expansion of a convention center facility;
6. a municipality with a population of less than 6,000 that is located in two counties each with a population of 600,000 or more that are both adjacent to a county with a population of two million or more, has a full time police and fire-department, and has adopted a capital improvement plan for the construction or expansion of a convention center facility;

1. a municipality with a population of at least 56,000 that borders Lake Ray Hubbard and is located in two counties one of which has a population of less than 80,000;
2. a municipality that borders Clear Lake, has a population of more than 83,000, and is primarily located in a county with a population of less than 300,000; and
3. a municipality that holds an annual jalapeno festival that is the county seat of a county that borders the United Mexican States, has a population of less than 300,000, and contains one or more municipalities with a population of 200,000 or more.

A new Subsection (f) would be added to Section 351.102 to place limitations on the use of revenue by a municipality with a population of at least 200,000 but not more than 300,000 that contains a component institution of the Texas Tech University System.

Chapter 351, Tax Code, would be amended to add new Section 351.10711 to authorize a municipality that is the county seat of a county that has a population of more than 10,000 and contains a portion of Mound Lake to use municipal hotel occupancy taxes to maintain, enhance or upgrade a sports facility or field. The municipality would be required to own the sports facilities or fields, and the facilities and fields would be required to have been used in the preceding year a combined total of 10 times for district, state, regional or national sports tournaments. A limitation would be provided on any reduction in the allocation of municipal hotel occupancy tax revenue related to advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity.

Chapter 352, Tax Code, regarding county hotel occupancy taxes, would be amended to add new Subsection (x) to Section 352.002 to provide that the commissioners court of a county that has a population of less than 100,000 and that borders Lake Ray Roberts can impose a county hotel tax. Section 352.003 would be amended to add new Subsection (u) to provide that the tax rate in a county authorized to impose the tax under Section 352.002(x) may not exceed 2 percent of the price paid for a room in a hotel. And a new Section 352.113 would be added to provide that the revenue from the tax imposed by that county may be used for any purpose described by Section 352.101(a).

Section 352.103, regarding the use of revenue for counties with no municipality, would be amended to add subsection (b) as an exception to the use of revenue that would apply only to a county with no municipality that owns an airport. The county so described could use county hotel occupancy tax revenue for repairs and improvements to the county airport for a period of up to 10 years, but not to exceed in total amount the amount of hotel revenue in the county likely to be reasonably attributable to guests traveling the airport during the 15-year period beginning on the date the county first uses the tax revenue for that purpose.

Section 351.101, Tax Code, regarding the use of municipal hotel tax revenue, would be amended by adding new Subsection (n) to permit a city that has a population of not more than 1,500 and is located in a county that borders Arkansas and Louisiana to use revenue from the municipal hotel occupancy tax for the promotion of tourism by the enhancement and upgrading of an existing sports facility or field, provided the city owns the facility or field and the facility was used in the preceding calendar year a combined total of more than 10 times for district, state, regional or national sports tournaments.

Section 351.1076, regarding the allocation of revenue for certain municipalities, would be amended to require the municipality described by Section 351.101(n) that spends municipal hotel tax revenue to enhance or upgrade facilities or fields to determine the amount of that tax revenue attributable to the sports events and tournaments held on those facilities or fields for five years after the date the enhancements and upgrades were completed. The municipality may not spend over that amount for enhancements and upgrades from the municipal hotel tax, and the municipality would reimburse from its general fund any expenditure in excess of the amount attributable to those enhancements or upgrades.

The bill would amend Chapter 156 of the Tax Code, regarding the state hotel occupancy tax, to allocate a share of state hotel occupancy taxes collected in certain coastal counties to a dedicated account.

The bill would add new Section 156.252 to define a "coastal county" as any county adjacent to the Gulf of Mexico or Corpus Christi Bay. The Comptroller, beginning with the state fiscal year beginning September 1, 2019 and not later than September 30 of each state fiscal year, would allocate annually to those coastal counties an amount equal to 2 percent of the taxable receipts subject to the state's hotel occupancy tax in those counties to the new coastal erosion response account. Any revenue derived from hotel occupancy taxes under Chapter 156 that is placed in a suspense account under Section 151.429(h) (sales tax and use tax rebate for qualified hotel projects) or Section 2303.5055(f) of the Government Code (tax rebates from qualified hotel projects) would be excluded from this computation.

The bill would amend Section 33.604(b) of the Natural Resources Code, regarding the coastal erosion response account, to include as a revenue source for this account the allocation from the state hotel occupancy tax to coastal counties under Section 156.252 of the Tax Code. This revenue would be subject only to appropriation to the General Land Office for certain coastal management program purposes that benefit a coastal county.

Section 351.002, Tax Code, regarding municipal hotel occupancy tax, would be amended by adding a new Subsection (d) to provide that a municipality may not in any way effectively prohibit more than 10 percent of the residential property in the municipality from being offered as sleeping accommodations for consideration, regardless of the homestead status of the property.

Section 351.102, Tax Code, would be amended to add a municipality that is the county seat of a county through which the Pedernales River flows and in which the birthplace of a president of the United States is located, to the set of municipalities that may pledge municipal hotel tax revenue and receive state hotel tax and state sales tax rebates for a convention hotel project.

Section 351.001, Tax Code, would be amended to expand the definition of an eligible central municipality to include a municipality with a population of 75,000 or more that is located wholly in a county with a population of 575,000 or more that is adjacent to a county with a population of four million or more and that has adopted a capital improvement plan for the construction and expansion of a convention center facility; a municipality with a population of less than 75,000 that is located in three counties, at least one of which has a population of at least four million; and an eligible barrier island coastal municipality described by Subdivision 156.2512(c)(1), Tax Code, with a population of at least 3,000 but not more than 5,000.

Section 351.102, Tax Code, would be amended to add a municipality with a population less than 2,000 that: 1) is located adjacent to a bay connected to the Gulf of Mexico, 2) is located in a county with population of 290,000 or more that is adjacent to a county with population of four million or more, and 3) has a boardwalk on the bay, to the set of municipalities that may pledge municipal hotel tax revenue and receive state hotel tax and state sales tax rebates for a convention hotel project.

The bill would take effect immediately upon enactment, assuming that it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2017.

Methodology

The bill would affect the use of municipal hotel tax revenue by the City of Denton.

The amendments of Chapter 334, Local Government Code, regarding sports and community venue motor vehicle rental tax and hotel tax authorizations and permissible uses have fiscal implications for units of local government that cannot be determined, and have no fiscal implications for the state.

The amendments of Sections 351.005, 351.101(g), and 351.1012(a), and additions of new Subsections (g-1) and (o) to Section 351.101 regarding uses of municipal hotel tax revenue may have fiscal implications for municipalities that cannot be determined, and have no fiscal implications for the state.

With respect to the amendments of Section 351.102, the following municipalities would be affected and have plans for convention hotel projects as follows:

The City of Abilene currently has planned a 200 room hotel, not expected to be operational before January 2020.

The City of Midland recently approved plans for a new convention center to be completed in 2018.

The City of Prosper currently has plans for a 500 room hotel expected to be operational in January 2020.

The City of Lubbock currently has plans for a 300 room hotel expected to be operational in January 2020.

The City of Lewisville currently has plans for a 150 room hotel expected to be operational in January 2020.

The City of Denton currently has no plans for a convention center hotel.

The City of Cedar Hill currently has plans for a 130 room hotel expected to be operation in September 2019.

The City of Roanoke currently has plans for a 300 room convention center hotel expected to be operational in February 2020.

The City of Rowlett currently has plans for a 500 room convention center hotel expected to be operational in the fall of 2021.

The City of League City currently has plans for multiple convention center hotels to open in 2019.

The City of Laredo currently has plans to designate an existing hotel as a project hotel in conjunction with a new convention center facility expected to be operational in the fall of 2021.

The cities of Abilene, Midland, Prosper, Lubbock, Lewisville, Denton, Cedar Hill, Roanoke, Rowlett, League City, and Laredo would be entitled to state sales tax and state hotel tax associated with a qualified hotel project under Section 151.429(h) of the Tax Code via Sections 351.102(b) and (c) of the Tax Code. Such funds must be deposited in a suspense account outside the state treasury to be paid to the owner of a qualified hotel project.

The estimates in the table above are based on expected opening dates and the planned or assumed room size of the prospective hotels, assumed average nightly room rates and annual average occupancy rate, an incremental gain in room nights sold in the state, and the ratio of state sales tax to hotel tax revenues paid to the owners of the extant qualified hotel projects.

The new Section 351.10711 would affect the permissible uses of municipal hotel tax revenue by the City of Brownfield in Terry County. It would have no state revenue implications.

The amendments of Chapter 352 have fiscal implications for county governments that cannot be determined and have no fiscal implications for the state.

Based on the 2010 decennial census, the City of Queen City would be authorized to use municipal hotel tax revenue for purposes for certain sports facilities; there would be no effect on that city's municipal hotel tax revenue collections.

The bill's definition of coastal counties would include Cameron, Willacy, Kenedy, Kleberg, Nueces, Aransas, San Patricio, Calhoun, Matagorda, Brazoria, Galveston, Chambers and Jefferson counties. The transfer of state hotel tax revenue, assumed to commence in fiscal 2020, would be a loss to unrestricted general revenue and equivalent gain to a new GR dedicated account for coastal erosion response. The estimated amounts were determined by calculating the share of state hotel tax revenue, attributable to a tax rate of 2 percent, collected from the coastal counties in fiscal year 2016, extrapolated through 2022 at the annual growth rates assumed for hotel occupancy tax revenue in the *2018-19 Biennial Revenue Estimate*.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either in, with, or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.095, consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Although this bill would not make an appropriation, it would establish the basis for an appropriation.

The effect of the provision would be to prohibit municipalities from imposing any significant limits on the number of homes that could be offered as short-term rental accommodations. Whether such prohibition of limits on the supply of short-term rental accommodations would result in lower average room rental prices for accommodations subject to state and local hotel occupancy taxes, and thus lower hotel tax revenues, cannot be determined.

The municipality that would be added as eligible to pledge hotel tax revenue and receive rebates of state hotel tax and state sales tax for a convention hotel project would be the City of Fredericksburg. The city currently plans for a 150 room hotel and new convention center facilities expected to open October 2019.

The municipalities that would be added to the definition of eligible central municipality are the cities of Sugar Land, Katy, and Port Aransas. Designation as eligible central municipalities would entitle these cities to state sales tax and state hotel tax associated with a qualified hotel project under Section 151.429(h) of the Tax Code via Section 351.102(b) & (c) of the Tax Code. Such funds must be deposited in a suspense account outside the state treasury to be paid to the owner of the qualified hotel project without the necessity of an appropriation.

The City of Sugar Land currently has plans for a 350 room convention center hotel expected to be operational in January 2021, the city of Katy currently has plans for a 305 room convention center hotel expected to be operational in the fall of 2020, and the city of Port Aransas currently has no plans for a convention center hotel.

The municipality that would be added as eligible to pledge hotel tax revenue and receive rebates of state hotel tax and state sales tax for a convention hotel project would be City of Kemah. The city plans to begin a study for a convention center hotel project if legislation authorizing rebates of state tax is enacted, but has no current plans for such a hotel project. Rebates of state tax for a Kemah project would consequently be unlikely before fiscal year 2022.

The estimates in the table above are based on planned or assumed room sizes of the prospective hotels, assumed average nightly room rates and annual average occupancy rate, an incremental gain in room nights sold in the state, and the ratio of state sales tax to hotel tax revenues paid to the owners of the extant qualified hotel projects.

Local Government Impact

The bill would make several changes to local hotel occupancy taxes described in the Fiscal Analysis section above.

Source Agencies:

LBB Staff: UP, KK, SD