LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 19, 2021

TO: Honorable Brian Birdwell, Chair, Senate Committee on Natural Resources & Economic Development

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB4103** by Burrows (Relating to the authority of certain municipalities to receive certain tax revenue derived from certain establishments related to a hotel and convention center project and to pledge certain tax revenue for the payment of obligations related to the project.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB4103, As Engrossed : a negative impact of ($33,044,000) through the biennium ending August 31, 2023.

General Revenue-Related Funds, Fourteen- Year Impact:

Fiscal Year	**Probable Net Positive/(Negative) Impact to *General Revenue Related Funds***
2022	($27,722,000)
2023	($5,322,000)
2024	($1,622,000)
2025	($13,192,000)
2026	($16,032,000)
2027	($24,422,000)
2028	($26,622,000)
2029	($20,822,000)
2030	($38,022,000)
2031	($44,922,000)
2032	($27,622,000)
2033	($28,822,000)
2034	($21,822,000)
2035	($3,622,000)

All Funds, Fourteen-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *General Revenue Fund* 1	Probable Savings/(Cost) from *General Revenue Fund* 1	*Change in Number of State Employees from FY 2021*
2022	($27,400,000)	($322,000)	3.0
2023	($5,000,000)	($322,000)	3.0
2024	($1,300,000)	($322,000)	3.0
2025	($12,870,000)	($322,000)	3.0
2026	($15,710,000)	($322,000)	3.0
2027	($24,100,000)	($322,000)	3.0
2028	($26,300,000)	($322,000)	3.0
2029	($20,500,000)	($322,000)	3.0
2030	($37,700,000)	($322,000)	3.0
2031	($44,600,000)	($322,000)	3.0
2032	($27,300,000)	($322,000)	3.0
2033	($28,500,000)	($322,000)	3.0
2034	($21,500,000)	($322,000)	3.0
2035	($3,300,000)	($322,000)	3.0

Fiscal Analysis

This bill would amend Chapters 151 and 351, Tax Code with respect to municipal hotel and convention center projects and permitted uses of municipal hotel occupancy tax revenue.

The bill would amend Section 151.429 by adding Subsection (h-1) to provide that the owner of a qualified hotel project that opened for initial occupancy before January 1, 2021 shall receive a rebate, refund, or payment of 100 percent of the state sales and use taxes and state hotel taxes as described by Subsection (h) during the two-year period beginning immediately following the expiration of the 10-year period authorized under Subsection (h). This subsection would expire January 1, 2033.

The bill would amend Section 351.102 by adding Subsection (c-1) to entitle a municipality described by Subsection (e) to receive state taxes under Section 151.429(h) and local taxes under Section 2303.5055, Government Code for a 12-year period if the hotel project opened for initial occupancy before January 1, 2021. This subsection would expire January 1, 2033.

The bill would similarly amend Section 351.158 to provide that a municipality described by Section 351.152 and thus authorized to have hotel and convention center projects entitled to receive rebates of state sales and hotel taxes are entitled to receive such revenues until the 12th anniversary of the date of opening of the qualified project hotel if the hotel opened before January 1, 2021, except that a municipality described by Section 351.152(10) would be entitled to receive such revenues until the 13th anniversary of the project hotel opening date.

The bill would amend Section 351.10712(a) to authorize a municipality located in a county that has a population of not more than 300,000 and in which a component university of the University of Houston System is located to use city hotel occupancy taxes to construct sports facilities and a multipurpose convocation center capable of hosting intercollegiate athletic events on land owned by a state university if the municipality leases the land from the university for at least 25 years.

The bill would amend Section 351.152 to add Subsections (43) and (44) to provide authority for a municipality located in a county that has a population of not more than 300,000 and in which a component university of the University of Houston System is located and a municipality with a population of less than 500,000 that is located in two counties and adjacent to a municipality described by Subdivision (31) to use rebates of state sales and use tax and hotel tax revenue for hotel and convention center projects.

The bill would add Section 351.1521 to permit a municipality with a population of more than 67,000 located in two counties, with 90 percent of the municipality's territory in a county with a population of at least 580,000 and the remaining territory in a county with a population of at least 4 million, to use rebates of state sales and use tax and hotel tax revenue for hotel and convention center projects, and would amend Section 351.1063(a) regarding prohibited reduction of the allocation of municipal hotel tax revenue for advertising and promotion of tourism to apply to that municipality.

The bill would amend Section 351.157(a) to define a qualified establishment to include an establishment located on land owned by the federal government if the establishment is located in a municipality described by Section 351.152(6). The bill would amend Sections 351.157(b) and (c) to entitle a municipality described by Sections 351.152(14) and 351.152(43) to receive rebates of state sales and use tax revenue derived from qualified establishments – certain restaurants, bars, and retail establishments, and if owned or operated by a qualified hotel, swimming pools and swimming facilities, within 1,000 feet of a qualified hotel or convention center facility. The bill would amend Section 351.157(e) to state that a project entitled to receive taxes derived from qualified establishments must be commenced before September 1, 2027.

The bill would add Section 351.161 to require that the comptroller, not later than the 60th day after a municipality submits a request, issue a private letter ruling determining whether a project described in the request is a qualified project under Subchapter C, Chapter 351, whether the municipality will be entitled to receive tax revenues under Sections 351.156 and 351.157, and whether items purchased in connection with the qualified project are exempt from state and local sales and use taxes.

Added section 351.161 requiring the Comptroller to issue private letter rulings regarding project eligibility within 60 days of a request from a municipality would require the Comptroller to make final determinations before all facts are known about some projects. The Comptroller would have to make such determinations based on initial or preliminary plans submitted by a city, which could be materially different from the completed project. By stating that a municipality could rely on such a determination, Section 351.161 also would expose the State and the Comptroller's office, including agency employees, to liability under securities-related anti-fraud provisions. A determination issued before a project is completed may mislead investors into believing the tax rebates are guaranteed. If a rebate request is denied after a determination has been issued, financial regulators may claim the State and the Comptroller's office, including its employees, are liable for penalties for providing statements that were misleading or misleading by omission.

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. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

The bill would take effect immediately upon enactment, assuming it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2021.

Methodology

The bill would have fiscal implications for the state due to provisions extending the period of time during which municipalities or the owners of certain qualified hotel projects are entitled to receive rebates of state sales and hotel taxes, and provisions authorizing additional cities to have qualified projects eligible for such rebates.

The bill would add two years to the ten year period of project entitlement to state revenues for projects with hotels that opened for initial occupancy before January 1, 2021, and with respect to the City of Round Rock project, would add three years. The entitlement period for the project in City of Dallas expires October 31, 2021 under current law; consequently, the two year extension of entitlement will entail additional rebate payments distributed over fiscal years 2022, 2023, and 2024. The extensions for most other projects would not have fiscal implications before fiscal 2027. The exceptions are three projects whose ten year entitlement periods expired before onset of the COVID-19 pandemic. Because the bill would add two years of rebate entitlement for all projects with hotel opening dates before January 1, 2021 and does not include express language to limit the added entitlement to projects whose entitlement period had not expired before the pandemic, the estimate includes a reserve of $24,100,000 for payment of additional rebates in fiscal 2022 should the owners of the projects with expired entitlement periods prevail in claims for additional rebates. In the case of projects with rebate history prior to the pandemic, additional rebate estimates were extrapolated from pre-pandemic rebate amounts to the two year period following the ten year period of entitlement provided under current law. In the case of projects without significant pre-pandemic rebate history, their pandemic rebate amounts were multiplied by the ratio of pre-pandemic to pandemic rebate amounts observed for projects with longer rebate histories, and those adjusted amounts extrapolated to the periods following the ten year periods applicable under current law to those more recently opened hotel projects.

The bill would provide that the City of Leander would be entitled to receive state sales and use tax and state hotel tax revenue generated, paid, and collected by a qualified hotel and each restaurant, bar, and retail establishment located in or connected to the hotel. Entitlement to state tax revenue would be for a period of 10 years after the qualified hotel is open for initial occupancy.

Leander has proposed plans for a 275 room hotel with 30,000 square feet of convention center space in the Northline mixed-use project in Leander's transit-oriented development area between Austin Community College's San Gabriel campus and St. David's hospital which includes shopping, dining, entertainment, apartments, townhomes, offices and a hotel.

The bill would provide that the City of Missouri City and the City of Victoria would be entitled to receive state sales and use tax and state hotel tax revenue generated, paid, and collected by a qualified hotel and each restaurant, bar, and retail establishment not more than 1,000 feet from the hotel or qualified convention center. Entitlement to state tax revenue would be for a period of 10 years after the qualified hotel is open for initial occupancy.

Missouri City has proposed plans for a 1,000 room hotel and mixed-use project near Highway 6 and the Fort Bend Toll Road which includes shopping, dining, entertainment and a hotel. Planned opening date would be September 2024 or state fiscal year 2025.

Victoria has no definite plans for a qualified hotel project as yet. This estimate assumes that the authorization granted by the bill to receive state tax revenues for a project would be utilized, with an opening in early fiscal 2025.

The bill would provide that the City of Lubbock would be entitled to receive state sales and use tax and state hotel tax revenue generated, paid, and collected by a qualified hotel and each restaurant, bar, and retail establishment not more than 1,000 feet from the hotel or qualified convention center and from swimming pools and swimming facilities owned or operated by the related qualified hotel. Entitlement to state tax revenue would be for a period of 10 years after the qualified hotel is open for initial occupancy.

Lubbock has proposed plans for a 250 room hotel with 7,700 sq. ft. of convention center space and 38,160 sq. ft. of common space in zip code 79401. The planned opening date would be September 2025.

Estimates of rebates of state tax revenues for qualified projects for the cities granted authorization are based on the planned or assumed room size of the prospective hotels, assumed average nightly room rates and annual average occupancy rate, and the ratio of state sales tax to hotel tax revenues paid to the owners of the extant qualified hotel projects and when applicable authorized for the additional entitlement to state sales tax revenue from establishments within 1,000 feet of the project hotel.

The Comptroller's office estimates administrative costs of $322,000 per year to implement the provisions of the bill. The costs are associated with adding three Tax Analyst II FTEs to issue the private letter rulings required by the bill.

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. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Note: Added section 351.161 requiring the Comptroller to issue private letter rulings regarding project eligibility within 60 days of a request from a municipality would require the Comptroller to make final determinations before all facts are known about some projects. The Comptroller would have to make such determinations based on initial or preliminary plans submitted by a city, which could be materially different from the completed project. By stating that a municipality could rely on such a determination, Section 351.161 also would expose the State and the Comptroller's office, including agency employees, to liability under securities-related anti-fraud provisions. A determination issued before a project is completed may mislead investors into believing the tax rebates are guaranteed. If a rebate request is denied after a determination has been issued, financial regulators may claim the State and the Comptroller's office, including its employees, are liable for penalties for providing statements that were misleading or misleading by omission.

Local Government Impact

The bill would add two years to the ten year period of project entitlement to state revenues for projects with hotels that opened for initial occupancy before January 1, 2021, and with respect to the City of Round Rock project, would add three years.

The bill would provide that the City of Leander would be entitled to receive state sales and use tax and state hotel tax revenue generated, paid, and collected by a qualified hotel and each restaurant, bar, and retail establishment located in or connected to the hotel.

The bill would provide that the City of Missouri City and the City of Victoria would be entitled to receive state sales and use tax and state hotel tax revenue generated, paid, and collected by a qualified hotel and each restaurant, bar, and retail establishment not more than 1,000 feet from the hotel or qualified convention center.

The bill would provide that the City of Lubbock would be entitled to receive state sales and use tax and state hotel tax revenue generated, paid, and collected by a qualified hotel and each restaurant, bar, and retail establishment not more than 1,000 feet from the hotel or qualified convention center and from swimming pools and swimming facilities owned or operated by the related qualified hotel.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JMc, AJL, SD, BRI