

BILL ANALYSIS

Senate Research Center
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H.B. 3727
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Natural Resources & Economic Development
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 85th Legislature passed S.B. 1221, which required municipalities that impose a hotel occupancy tax to submit to the Comptroller of Public Accounts of the State of Texas an annual report concerning that tax. Since then, the legislature has extended the reporting requirement to counties that impose a hotel occupancy tax. However, there are still some categories of hotel occupancy tax uses that are not reported to the state. Requiring municipalities and counties to report on all allowable use of hotel occupancy tax revenue would further increase the transparency of the tax as well as ensure it is being used properly. The history of the local hotel occupancy tax dates to the 1960s, and the Tax Code has been amended many times over the decades. As language has been added to the code, confusing and sometimes contradictory provisions have been inserted. To better facilitate the smooth administration of local hotel occupancy taxes, Tax Code definitions need to be revised and updated.

Further, there is a need for additional accountability and transparency with respect to the use of hotel occupancy tax revenue for certain qualified hotel and convention center projects. Specifically, because the state allows local jurisdictions to capture certain state tax revenues derived from these projects, the state needs a mechanism to claw back lost revenue if the project has not generated adequate revenues to offset state funds used to invest in the project. Additionally, since these projects involve state tax revenue, the legislature needs additional information to ensure that the desired outcomes of this program are being achieved.

H.B. 3727, an omnibus local hotel occupancy tax bill, seeks to address these myriad issues by revising the annual hotel occupancy tax reporting requirements, updating various Tax Code definitions applicable to the use of hotel occupancy tax revenue, implementing a claw back mechanism for hotel and convention center projects, and providing for a biennial report to the legislature regarding the status of each such project.

H.B. 3727 amends current law relating to municipal and county hotel occupancy taxes.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Comptroller of Public Accounts of the State of Texas is modified in SECTION 2 (Section 351.009, Tax Code) and SECTION 8 (Section 352.009, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 351.001(2), (6), (8), and (10), Tax Code, to redefine "convention center facilities," "convention center complex," "tourist," and "visitor information center," and to define "multiuse facility."

SECTION 2. Amends Section 351.009, Tax Code, as follows:

Sec. 351.009. ANNUAL REPORT TO COMPTROLLER. (a) Requires a municipality that imposes the tax authorized by Chapter 351 (Municipal Hotel Occupancy Taxes), not later than March 1, rather than February 20, of each year, to report to the Comptroller of Public Accounts of the State of Texas (comptroller):

(1) makes no changes to this subdivision;

(2) makes a nonsubstantive change to this subdivision;

(3) the amount and percentage of the revenue described by Subdivision (2)(A) (relating to the amount of revenue collected during the municipality's preceding fiscal year from the tax imposed by the municipality under this chapter) allocated by the municipality to each use authorized by this chapter for which the municipality used the revenue during the municipality's preceding fiscal year, stated separately as an amount and percentage for each applicable use, rather than each use described by certain subdivisions of Section 351.101(a) (relating to authorizing revenue from the municipal hotel occupancy tax to be used only to promote tourism and the convention and hotel industry, and that use is limited to certain purposes) during the municipality's preceding fiscal year stated separately as an amount and percentage for each of those subdivisions; and

(4) the total amount of any revenue described by Subdivision (2)(A) collected in any preceding fiscal year of the municipality that has not yet been spent by the municipality and the amount of that unexpended revenue, if any, that remains in the municipality's possession in the fiscal year in which the report is due.

(b) Deletes existing Subdivision (2) requiring the municipality to make the report required by this section by providing the comptroller a direct link to, or a clear statement describing the location of, the information required to be reported that is posted on the Internet website of the municipality.

(c) Requires the comptroller, rather than requires the comptroller subject to Subsection (b)(2), to prescribe the form a municipality is required to use for the report required to be submitted under this section.

(d) Authorizes a municipality that is required to make a report to the comptroller under this section to use a portion of the revenue described by Subsection (a)(2)(A) for the costs incurred by the municipality in making and submitting the report. Prohibits the amount of revenue a municipality is authorized to use each year for the purpose authorized by this subsection from exceeding:

(1) \$1,000 if the municipality has a population of less than 10,000; or

(2) \$2,500 if the municipality has a population of 10,000 or more.

(e) Redesignates existing Subsection (d) as Subsection (e).

SECTION 3. Amends Section 351.101, Tax Code, by adding Subsection (f-1), as follows:

(f-1) Prohibits a municipality from using municipal hotel occupancy tax revenue for a visitor information center under Subsection (a)(1) (relating to the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both) to acquire a site for, construct, improve, enlarge, equip, repair, staff, operate, or maintain any part of a building or facility that is not primarily used to distribute or disseminate tourism-related information to tourists.

SECTION 4. Amends Section 351.1021(a)(3), Tax Code, to redefine "multipurpose convention center facility project."

SECTION 5. Amends Sections 351.103(a), (b), and (c), Tax Code, as follows:

(a) Requires a municipality with a population of less than 200,000 to allocate for the purposes provided by Section 351.101(a)(3) (relating to advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity) an amount of hotel occupancy tax revenue collected by the municipality that is not less than the amount of revenue received by the municipality from the tax at a rate of one percent of the cost of a room.

Deletes existing text requiring that at least 50 percent of the hotel occupancy tax revenue collected by a municipality with a population of 200,000 or greater be allocated for the purposes provided by Section 351.101(a)(3). Deletes existing text providing that for municipalities with a population of less than 200,000, allocations for the purposes provided by Section 351.101(a)(3) are as follows:

(1) if the tax rate in a municipality is not more than three percent of the cost paid for a room, not less than the amount of revenue received by the municipality from the tax at a rate of one-half of one percent of the cost of the room; or

(2) if the tax in a municipality exceeds three percent of the cost of a room, not less than the amount of revenue received by the municipality from the tax at a rate of one percent of the cost of a room. Deletes existing text providing that this subsection does not apply to a municipality, regardless of population, that before October 1, 1989, adopted an ordinance providing for the allocation of an amount in excess of 50 percent of the hotel occupancy tax revenue collected by the municipality for one or more specific purposes provided by Section 351.101(a)(1) until the ordinance is repealed or expires or until the revenue is no longer used for those specific purposes in an amount in excess of 50 percent of the tax revenue.

(b) Requires a municipality with a population of more than 1.6 million to allocate at least 23 percent of the hotel occupancy tax revenue collected by the municipality for the purposes provided by Section 351.101(a)(3), except that the allocation is subject to and is prohibited from impairing the authority of the municipality to take certain actions.

Deletes existing text providing that Subsection (a) does not apply to a municipality in a fiscal year of the municipality if the total amount of hotel occupancy tax collected by the municipality in the most recent calendar year that ends at least 90 days before the date the fiscal year begins exceeds \$2 million. Deletes existing text requiring a municipality excepted from the application of Subsection (a) by this subsection to allocate hotel occupancy tax revenue by ordinance, consistent with the other limitations of Section 351.103 (Allocation of Revenue: General Rule). Deletes existing text prohibiting the portion of the tax revenue allocated by a municipality with a population of more than 1.6 million for the purposes provided by Section 351.101(a)(3) from being less than 23 percent, except that the allocation is subject to and is prohibited from impairing the authority of the municipality to take certain actions.

(c) Authorizes not more than 15 percent of the hotel occupancy tax revenue collected by a municipality, rather than by a municipality having a population of more than 125,000, to be used for the purposes provided by Section 351.101(a)(5) (relating to historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums). Authorizes a municipality that before January 1, 2023, adopted in accordance with state law an ordinance providing for the allocation of an amount in excess of 15 percent of the hotel occupancy tax revenue collected by the municipality for one or more of the specific purposes provided by Section 351.101(a)(5) to allocate tax revenue as provided by that ordinance until the ordinance is repealed or expires or until the revenue is no longer used for those specific purposes.

SECTION 6. Amends Section 351.110(c), Tax Code, to provide that Section 351.110 (Allocation of Revenue for Certain Transportation Systems) does not authorize the use of revenue derived from the tax imposed under this chapter for a transportation system that serves the general public other than for a system described by Subsection (a) (relating to authorizing a municipality to use

the revenue derived from the tax imposed for a transportation system to transport tourists from hotels in and near the municipality to certain locations), rather than for a system that is primarily used by tourists that transports tourists as described by Subsection (a).

SECTION 7. Amends Subchapter C, Chapter 351, Tax Code, by adding Sections 351.161, 351.162, and 351.163, as follows:

Sec. 351.161. APPLICATION OF OTHER LAW. Prohibits Subchapter C (Municipal Hotel and Convention Center Projects) from being construed as authorizing the taking of private property for economic development purposes in a manner inconsistent with the requirements of Section 17 (Taking Property for Public Use; Special Privileges and Immunities; Control of Privileges and Franchises), Article I (Bill of Rights), Texas Constitution, or Section 2206.001 (Limitation on Eminent Domain for Private Parties or Economic Development), Government Code.

Sec. 351.162. RECAPTURE OF LOST STATE TAX REVENUE FROM CERTAIN MUNICIPALITIES. (a) Provides that this section applies only to a qualified project that is first commenced on or after:

(1) January 1, 2024, unless Subdivision (2) applies to the qualified project; or

(2) January 1, 2027, if the qualified project was authorized before January 1, 2023, by a municipality with a population of 175,000 or more.

(b) Requires the comptroller, on the 20th anniversary of the date a hotel designated as a qualified hotel by a municipality as part of a qualified project to which this section applies is open for initial occupancy, to determine:

(1) the total amount of state tax revenue received under Section 351.156 (Entitlement to Certain Tax Revenue) and, if applicable, under Section 351.157 (Additional Entitlement for Certain Municipalities) by the municipality from the qualified project during the period for which the municipality was entitled to receive that revenue; and

(2) the total amount of state tax revenue described by Subdivision (1) received by the state during the period beginning on the 10th anniversary of the date the qualified hotel opened for initial occupancy and ending on the 20th anniversary of that date from the same sources from which the municipality received the revenue described by Subdivision (1).

(c) Requires the comptroller, if the amount determined under Subsection (b)(1) exceeds the amount determined under Subsection (b)(2), to promptly provide written notice to the municipality stating that the municipality is required to remit to the comptroller the difference between those two amounts in the manner provided by this subsection. Requires the municipality, using money lawfully available to the municipality for the purpose, to remit monthly payments to the comptroller in an amount equal to the total amount of municipal hotel occupancy tax revenue received by the municipality from the qualified hotel in the preceding month until the amount remitted to the comptroller equals the total amount due as stated in the notice. Requires that the first payment required under this subsection be made not later than the 30th day after the date the municipality receives the notice from the comptroller. Provides that subsequent payments are due on the 20th day of each month until the total amount stated in the notice is paid. Requires the comptroller to prescribe the procedure a municipality is required to use to remit a payment required by this subsection to the comptroller.

(d) Requires the comptroller to deposit revenue received under this section in the manner prescribed by Section 156.251 (Revenue Deposited in General Revenue Fund).

Sec. 351.163. REPORT ON QUALIFIED PROJECTS. (a) Requires the comptroller, not later than December 1 of each even-numbered year, to prepare a report on the status of each qualified project.

(b) Requires that the report include, for each qualified project:

(1) the location and a description of the project, including the current status of the project;

(2) the number of qualified hotels and qualified convention center facilities associated with the project;

(3) the total amount of tax revenue received by a municipality under Section 351.156 and, if applicable, Section 351.157 as a result of the project;

(4) the amount of state tax revenue generated by the project that has been received by the state after the period of entitlement for the project as prescribed by Section 351.158 (Period of Entitlement) has ended; and

(5) whether the municipality is required to remit payments to the comptroller under Section 351.162 as a result of the project.

(c) Authorizes the comptroller to include in the report any additional information the comptroller determines is necessary to evaluate the effect of each qualified project on the economy of this state.

(d) Requires the comptroller to:

(1) post a copy of the report on the comptroller's Internet website; and

(2) provide a copy of the report to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature.

SECTION 8. Amends Section 352.009, Tax Code, as follows:

Sec. 352.009. ANNUAL REPORT TO COMPTROLLER. (a) Requires a county that imposes the tax authorized by Chapter 352 (County Hotel Occupancy Taxes), not later than March 1 of each year, rather than February 20 of each year, to report to the comptroller:

(1)-(2) makes nonsubstantive changes to these subdivisions;

(3) the amount and percentage of the revenue described by Subdivision (2)(A) (relating to the amount of revenue collected during the county's preceding fiscal year from the tax imposed by the county under this chapter) allocated by the county to each use authorized by this chapter for which the county used the revenue during the county's preceding fiscal year, stated separately as an amount and percentage for each applicable use; and

(4) the total amount of any revenue described by Subdivision (2)(A) collected in any preceding fiscal year of the county that has not yet been spent by the county and the amount of that unexpended revenue, if any, that remains in the county's possession in the fiscal year in which the report is due.

(b) Deletes existing Subdivision (2) requiring the county to make the report required by this section by providing the comptroller a direct link to, or a clear

statement describing the location of, the information required to be reported that is posted on the Internet website of the county.

(c) Requires the comptroller, rather than requires the comptroller subject to Subsection (b)(2), to prescribe the form a county is required to use for the report required to be submitted under this section.

(d) Authorizes a county that is required to make a report to the comptroller under this section to use a portion of the revenue described by Subsection (a)(2)(A) for the costs incurred by the county in making and submitting the report. Prohibits the amount of revenue a county is authorized to use each year for the purpose authorized by this subsection from exceeding:

(1) \$1,000 if the county has a population of less than 10,000; or

(2) \$2,500 if the county has a population of 10,000 or more.

(e) Redesignates existing Subsection (d) as Subsection (e).

SECTION 9. Repealers: Sections 351.103(d) (relating to authorizing a municipality that does not allocate any hotel occupancy tax revenue for certain purposes to allocate not more than 50 percent of the hotel occupancy tax revenue collected by the municipality for certain purposes) and (e) (relating to authorizing a municipality to use hotel occupancy tax revenue collected by the municipality only if the municipality complies with certain provisions), Tax Code.

Repealer: Section 351.110(b) (relating to authorizing the transportation system that transports tourists to be owned and operated by the municipality or privately owned and operated but partially financed by the municipality), Tax Code.

SECTION 10. Requires the comptroller to prescribe the form of the report required under Sections 351.009 and 352.009, Tax Code, as amended by this Act, not later than January 1, 2024. Requires a municipality or county required to make a report under those sections to submit the 2024 report using the form prescribed by the comptroller under this section.

SECTION 11. Effective date: upon passage or September 1, 2023.