

## **BILL ANALYSIS**

C.S.H.B. 3727  
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Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In the 85th Session, the legislature passed S.B. 1221, which required municipalities that impose a hotel occupancy tax to submit to the comptroller of public accounts 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.

C.S.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.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3727 amends the Tax Code to set out and revise provisions relating to the imposition and use of revenue derived from the municipal hotel occupancy tax and the reporting of information relating to municipal and county hotel occupancy taxes.

## **Annual Hotel Occupancy Tax Reports**

C.S.H.B. 3727 changes the deadline by which a municipality or county that imposes a hotel occupancy tax must make its annual report regarding that tax to the comptroller of public accounts from February 20 to March 1. The bill removes the option for a municipality or county to make the report 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 municipality's or county's website as an alternative to directly submitting the report to the comptroller. The bill authorizes a municipality or county to use a portion of the general hotel occupancy tax revenue for the costs incurred in making and submitting the report, subject to a \$1,000 cap for a municipality or county with a population of less than 10,000 and a \$2,500 cap for a municipality or county with a population of 10,000 or more.

C.S.H.B. 3727 does the following with respect to the contents of these reports:

- expands the scope of the requirement for a municipality to report the amount and percentage of the general hotel occupancy tax revenue allocated to certain of the statutorily authorized uses during the preceding fiscal year by making the requirement applicable with respect to all authorized uses of municipal hotel occupancy tax revenue for which the municipality used the revenue during the preceding fiscal year;
- aligns municipal and county reporting requirements by subjecting counties to the same expanded requirement with respect to the authorized uses of general hotel occupancy tax revenue; and
- includes among the information both a municipality and county must report the total amount of general occupancy tax revenue collected in any preceding fiscal year that has not yet been spent and the amount of that unexpended revenue, if any, that remains in that municipality's or county's possession for the fiscal year in which the report is due.

C.S.H.B. 3727 requires the comptroller to prescribe the form of the required reports not later than January 1, 2024. A municipality or county required to make such a report must submit the 2024 report using the prescribed form.

## **Municipal Hotel Occupancy Tax Definitions**

C.S.H.B. 3727 sets out and revises the following definitions applicable to the municipal hotel occupancy tax:

- revises the definition of "convention center facilities" or "convention center complex" to update the provision classifying as such parking areas or facilities that are for the parking or storage of conveyances that are in the vicinity of other convention center facilities by specifying that in the vicinity means within 1,500 feet;
- with respect to the requirement that a convention center facility's or convention center complex's primary use be hosting conventions and meetings, the bill redefines "meetings" from gatherings of people that enhance and promote tourism and the convention and hotel industry to gatherings that are attended by tourists or individuals who spend the night at a hotel or attend a meeting at a hotel and that enhance and promote that industry;
- expands the definition of "tourist" to include any individual who travels from their residence to a different municipality, county, state, or country for business;
- revises the definition of "visitor information center" or "tourism information center" by specifying that for a building or a portion of a building used to distribute or disseminate information to tourists qualifies as such only if that is the primary use of the space; and
- defines "multiuse facility" as a facility at which the majority of events attract tourists who substantially increase economic activity at hotels in the municipality in which the facility is located.

## **General Allocation of Municipal Hotel Occupancy Tax Revenue**

C.S.H.B. 3727 removes the provision requiring a municipality with a population of 200,000 or greater to allocate at least 50 percent of its hotel occupancy tax revenue for advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity. The bill subjects all municipalities with a population of less than 200,000 to the requirement to allocate for those purposes 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 and removes provisions excepting a municipality from that allocation requirement for a fiscal year 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.

C.S.H.B. 3727 subjects all municipalities, irrespective of population, to the 15 percent cap on the amount of municipal hotel occupancy tax revenue that may be used for historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit certain preserved historic sites or museums, except that a municipality that before January 1, 2023, adopted in accordance with state law an ordinance allocating an amount of that revenue for one or more such purposes in excess of the 15 percent cap may 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.

C.S.H.B. 3727 repeals the provision conditioning the authority of a municipality to use hotel occupancy tax revenue for 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, on the municipality complying with the other general allocation requirements.

## **Use of Municipal Hotel Occupancy Tax Revenue for Visitor Information Centers**

C.S.H.B. 3727 prohibits a municipality from using municipal hotel occupancy tax revenue to acquire a site for, construct, improve, enlarge, equip, repair, staff, operate, or maintain any part of a building or facility that is a visitor information center if that building or facility is not primarily used to distribute or disseminate tourism-related information to tourists.

## **Pledge or Commitment of Certain Tax Revenue for Certain Convention Center Projects**

C.S.H.B. 3727 specifies that, with respect to the entitlement of an applicable municipality or local government corporation to receive certain funds from a multipurpose convention center facility project and the authorization to pledge or commit those funds for the payment of obligations issued or incurred for the project, a parking shuttle or transportation system qualifies as part of the project only if the shuttle or system is used primarily by tourists.

## **Allocation of Municipal Hotel Occupancy Tax Revenue for Certain Transportation Systems**

C.S.H.B. 3727 narrows the scope of the authorization for a municipality to use municipal hotel occupancy tax revenue for a transportation system to transport tourists from hotels in and near the municipality. The bill revises the provision authorizing a municipality to use such revenue for a transportation system that serves the general public provided that the system also transports tourists to require that a system that services the general public primarily be used by tourists to be eligible for funding with that revenue. The bill repeals a provision requiring a level of municipal involvement in the ownership and operation of the transportation system.

## **Municipal Hotel and Convention Center Projects**

### Application of Other Law

C.S.H.B. 3727 establishes that provisions entitling specified municipalities to receive certain tax revenue derived from a hotel and convention center project and authorizing those municipalities to pledge or commit certain tax revenue for the payment of obligations relating to the project may not be construed as authorizing the taking of private property for economic development purposes in a manner inconsistent with the requirements of the Texas Constitution or applicable state law.

### Recapture of Lost State Tax Revenue from Certain Municipalities

C.S.H.B. 3727 requires the comptroller to determine the following on the 20th anniversary of the date a hotel designated as a qualified hotel by a municipality as part of a qualified project is open for initial occupancy:

- the total amount of state tax revenue received in accordance with that entitlement by the municipality from the qualified project and, if applicable, in accordance with the additional entitlement for certain municipalities to receive revenue from a qualified establishment near the hotel or convention center facility during the period for which the municipality was entitled to receive the revenues; and
- the total amount of tax revenue 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 revenue in accordance with the entitlements.

If the former amount exceeds the latter amount, the comptroller must promptly provide written notice to the municipality stating that the municipality must remit to the comptroller the difference between those two amounts. The bill 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. The first payment must be made not later than the 30th day after the date the municipality receives the notice from the comptroller and subsequent payments are due on the 20th day of each month until the total amount stated in the notice is paid. The bill requires the comptroller to prescribe the procedure a municipality must use to remit a payment. These provisions apply only to a qualified project that is first commenced on or after January 1, 2024, or, if the qualified project was authorized before January 1, 2023, by a municipality with a population of 175,000, on or after January 1, 2027.

### Report on Qualified Projects

C.S.H.B. 3727 requires the comptroller, not later than December 1 of each even-numbered year, to prepare a report on the status of each qualified project that includes the following information for each project:

- the location and a description of the project, including the project's current status;
- the number of qualified hotels and qualified convention center facilities associated with the project;
- the total amount of certain state tax revenue received by a municipality as a result of the project;
- 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 has ended; and
- whether the municipality is required to remit payments to the comptroller as a result of the project in accordance with the bill's provisions.

The comptroller may include in the report any additional information the comptroller determines is necessary to evaluate the effect of each qualified project on the state economy. The bill requires the comptroller to post a copy of the report on the comptroller's website and provide a

copy of the report to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature.

### **Repealed Provisions**

C.S.H.B. 3727 repeals the following provisions of the Tax Code:

- Sections 351.103(d) and (e); and
- Section 351.110(b).

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 3727 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced included among the information a municipality or county must report to the comptroller regarding its hotel occupancy tax the total amount of general occupancy tax revenue collected in any preceding fiscal year that is spent in that municipality's or county's budget for the fiscal year in which the report is due, the substitute instead requires a municipality or county to report any amount of such revenue that remains in the municipality's or county's possession in the fiscal year in which the report is due.

The substitute revises the provision in the introduced prohibiting a municipality from using municipal hotel occupancy tax revenue to acquire a site for, construct, improve, enlarge, equip, repair, staff, operate, or maintain any part of a building or facility that is a visitor information center if that building or facility is not exclusively used to distribute or disseminate tourism-related information to tourists. The substitute makes that provision applicable instead with respect to a building or facility that is not primarily used for those purposes.

The introduced redefined "tourist" as that term relates to the municipal hotel occupancy tax from any individual who travels from their residence to a different municipality, county, state, or country for pleasure, recreation, education, or culture to an individual who does one of the following:

- travels at least 50 miles from their residence to a different municipality, county, state, or country for business, pleasure, recreation, education, or culture;
- attends a meeting at a hotel or an event at a hotel; or
- spends the night at a hotel.

The substitute revises the definition of "tourist" instead only by classifying as such an individual who travels from their residence to a different municipality, county, state, or country for business but does also include a provision absent from the introduced redefining "meetings," for purposes of the requirement that a convention center facility's or convention center complex's primary use be hosting conventions and meetings, from gatherings of people that enhance and promote tourism and the convention and hotel industry to gatherings that are attended by tourists or individuals who spend the night at a hotel or attend a meeting a hotel and that enhance and promote that industry.

With respect to the provisions providing for the recapture of lost state tax revenue from certain municipalities, the bill makes the following changes to the introduced:

- changes the applicability of the provisions from applying to a municipality to which state law entitling specified municipalities to receive certain tax revenue derived from a hotel and convention center project and authorizing those municipalities to pledge or commit certain tax revenue for the payment of obligations relating to the project first applied on

or after January 1, 2023, to applying to a qualified project that is first commenced on or after January 1, 2024, or, under certain circumstances, January 1, 2027;

- expands the state tax revenues factored into the calculation used to determine whether recapturing lost revenue is necessary from only the revenues received under that aforementioned entitlement to those revenues as well as any revenue received under the additional entitlement for certain municipalities to receive revenue from a qualified establishment near the hotel or convention center facility, if applicable to a given municipality; and
- replaces the provision requiring a municipality determined to owe the state for lost tax revenue to remit to the comptroller the municipal hotel occupancy tax revenue received by the municipality from the qualified hotel until the amount remitted to the comptroller equals the amount owed with provisions that do the following:
  - require the comptroller to promptly provide written notice to the municipality after determining that the municipality owes the state for lost tax revenue stating to the municipality that the municipality must remit the amount owed to the comptroller;
  - require 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;
  - impose deadlines for the first payment and all subsequent payments; and
  - require the comptroller to prescribe the procedure a municipality must use to remit a payment to the comptroller.

Whereas the introduced required the comptroller to prepare a report on the status of each qualified project that includes the amount of new state tax revenue generated by the project that has been received by the state, the substitute requires the report to include instead 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 has ended. The substitute includes a requirement absent from the introduced for the report to include whether the municipality must remit payments to the comptroller as a result of the project in accordance with the bill's provisions.