

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 25, 2023

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB5012 by Clardy (Relating to the authority of certain municipalities to use certain tax revenue for hotel and convention center projects and other qualified projects.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB5012, As Passed 2nd House : a negative impact of (\$9,444,000) through the biennium ending August 31, 2025.

General Revenue-Related Funds, Ten- Year Impact:

<i>Fiscal Year</i>	<i>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2024	(\$2,479,000)
2025	(\$6,965,000)
2026	(\$12,391,000)
2027	(\$49,443,000)
2028	(\$56,941,000)
2029	(\$65,245,000)
2030	(\$74,161,000)
2031	(\$83,549,000)
2032	(\$93,497,000)
2033	(\$103,962,000)

All Funds, Ten-Year Impact:

<i>Fiscal Year</i>	<i>Probable Revenue Gain/(Loss) from General Revenue Fund 1</i>
2024	(\$2,479,000)
2025	(\$6,965,000)
2026	(\$12,391,000)
2027	(\$49,443,000)
2028	(\$56,941,000)
2029	(\$65,245,000)
2030	(\$74,161,000)
2031	(\$83,549,000)
2032	(\$93,497,000)
2033	(\$103,962,000)

Fiscal Analysis

The bill would amend Chapter 351 of the Tax Code (Municipal Hotel Occupancy Taxes) relating to the authority of certain municipalities to receive tax revenue derived from a hotel and convention center project and to

pledge certain tax revenue for the payment of obligations related to the project.

The bill would amend Section 351.1015 of the Tax Code (Certain Qualified Projects) to define “hotel-associated revenue” as the sum of state tax revenue collected in a project financing zone from all hotels located in the zone that would be available to the owners of qualified hotel projects under Section 151.429(h) if the hotels were qualified hotel projects, excluding the amount of that revenue received by a municipality under Section 351.156 or 351.157 in connection with a qualified hotel located in the zone that exists on the date the municipality designates the zone, except as provided by Paragraph (B); or under Section 351.102(c) for a hotel project described by Section 351.102(b) and located in the zone that exists on the date the municipality designates the zone; and (B) tax revenue collected from all permittees under Chapter 183 at hotels located in the zone, excluding revenue disbursed by the comptroller under Section 183.051(b).

The bill would amend Section 351.1015 to apply to a project located in a municipality described by Section 351.001(7)(B) or a municipality described by Section 351.152(61). The bill would allow a local government corporation that is authorized to collect a municipal hotel occupancy tax to act as a municipality under this section and to be considered a municipality for purposes of this section. For a municipality described by Subsection (b)(2) or (4), the term "qualified project" also means a venue described by Section 334.001(4)(A), Local Government Code, and any related infrastructure.

The bill would amend Sections 351.152(5)-(7), (11), (13), (16)-(19), (21)-(23), (26), (31), (36), (38), (40), (42), and (45) of the Tax Code (Municipal Hotel Occupancy Taxes; Applicability) to update population brackets for municipalities authorized to receive certain tax revenue derived from a hotel and convention center project and to pledge certain revenue for the payment of obligations related to the project.

The bill would add Sections 351.152(46)-(64): (46) a municipality that: (A) has a population of 100,000 or more; and (B) is wholly located in, but is not the county seat of, a county with a population of one million or more: (i) in which all or part of a municipality with a population of one million or more is located; and (ii) that is adjacent to a county with a population of 2.5 million or more; (47) a municipality that is the county seat of a county bordering the Gulf of Mexico and the United Mexican States; (48) a municipality that is bisected by the Guadalupe River and is the county seat of a county with a population of 170,000 or more; (49) a municipality with a population of 70,000 or more but less than 150,000 that borders Joe Pool Lake; (50) a municipality with a population of 115,000 or more that borders the Neches River; (51) a municipality described by Section 351.101(k); (52) a municipality that is the county seat of a county: (A) through which the Brazos River flows; and (B) in which a national monument is located; (53) a municipality with a population of 45,000 or more that: (A) is not the county seat of a county; (B) is located in a single county; and (C) contains a portion of Lake Lewisville; (54) a municipality that is the county seat of a county with a population of more than 900,000 that is adjacent to two counties, each of which has a population of more than 1.8 million; (55) a municipality that hosts an annual wine festival and is located in three counties, each of which has a population of more than 900,000; (56) a municipality that has a population of at least 150,000 but less than 1,300,000 and is partially located in a county that contains a portion of Cedar Creek Reservoir; (57) a municipality that is located in a county that contains a portion of Cedar Creek Reservoir and in which a private college is located; (58) a municipality that is the county seat of a county: (A) with a population of one million or more; (B) in which all or part of a municipality with a population of one million or more is located; and (C) that is located adjacent to a county with a population of 2.5 million or more; (59) a municipality that is the county seat of a county that contains a portion of Cedar Creek Reservoir and borders a county with a population of more than 240,000; and (60) a municipality with a population of more than 80,000 but less than 150,000 that is located in a county with a population of more than 369,000 but less than 864,000 that contains part of an active duty United States Army installation; (61) a municipality with a population of 750,000 or more that is located in a county with a population of 1.5 million or less; (62) a municipality with a population of less than 7,000 that contains a country music hall of fame; (63) a municipality with a population of 35,000 or more that contains a railroad museum and is located in a county that: (A) has a population of 800,000 or more; and (B) is adjacent to a county with a population of four million or more; and (64) a municipality: (A) that is the county seat of a county: (i) with a population of 60,000 or less; and (ii) that borders the Rio Grande; and (B) in which is located a United States military fort listed in the National Register of Historic Places.

The bill would amend Section 351.153(a) of the Tax Code (Exception to the Ownership Requirement), to exempt a municipality described by Section 351.152(5) and (58) from the requirement that qualified hotel project must be owned by and located on land owned by the municipality.

The bill would amend Section 351.157(b) (Additional Entitlement for Certain Municipalities) to add (1-a), (11-a), (13)-(19): (1-a) a municipality described by Section 351.152(5); (11-a) a municipality described by Section 351.152(41); (13) a municipality described by Section 351.152(46); (14) a municipality described by Section 351.152(47); (15) a municipality described by Section 351.152(49); (16) a municipality described by Section 351.152(53); (17) a municipality described by Section 351.152(54); (18) a municipality described by Section 351.152(56); and (19) a municipality described by Section 351.152(58).

The bill would add Section 351.157(c-1) to entitle a municipality receive revenue under Subsection (d) derived from the following types of establishments that meet the requirements of Subsections (a)(1), (2), (3), and (4): restaurants; bars; retail establishments; and swimming pools and swimming facilities owned or operated by the related qualified hotel.

The bill would add Section 351.161 (Recapture of Lost State Tax Revenue from Certain Municipalities) to recapture lost state tax revenue in the event the total amount of state tax revenue received by the municipality from the state in the first 10 years entitlement exceeds the amount of revenue received by the state from the same sources over the following 10 years. Section 351.161 only applies to a qualified project that is first commenced on or after January 1, 2024; or January 1, 2027, if the qualified project was authorized before January 1, 2023, by a municipality with a population of 175,000 or more. This section does not apply to a qualified project that is the subject of an economic development agreement authorized by Chapter 380, Local Government Code, entered into on or before January 1, 2022.

The bill would repeal Section 351.157(c) of the Tax Code.

Methodology

Section 351.1015 would amend the definition of hotel-associated revenue to exclude any amount distributed under Sec. 351.156 or 351.157 to a qualified hotel project already within the zone in the year the zone is designated.

Section 351.1015 would be amended to authorize project finance zones for Corpus Christi and Austin. These cities would be provided authority to receive incremental hotel-associated revenue from all hotels within the zone's boundaries, for a period of up to 30 years, less any amount distributed to a qualified hotel project already within the zone in the year the zone is designated. The incremental revenue would be all such revenue in excess of the amounts from hotels within the zone during the year the project zone is designated by the municipality.

The Comptroller would begin depositing the estimated monthly incremental hotel-associated revenue into Fund 0805 – Incremental Hotel-Associated Revenue Suspense Trust once the hotels, and associated businesses in the hotels, within the zone have been determined by the city and validated by the Comptroller.

As incremental revenue available to finance development of project-associated infrastructure would be maximized by establishing the earliest year possible as base year for the determination of incremental revenue, it is assumed project designations for Corpus Christi and Austin would occur during 2023, the year of the effective date of the bill, with deposits to the project trust accounts beginning in 2024. The estimates are based on hotel tax revenue from hotels currently in operation and identified as within the likely boundaries of the zones, multiplied by a factor to account for associated sales tax and mixed beverage tax revenue based on data for extant hotel projects, extrapolated to future years at an average annual growth rate of six percent as representative of typical hotel tax growth rates prior to the pandemic.

As these estimates for project financing zone rebates are extrapolated from hotels currently in operation, they do not reflect higher payments to a project zone that would occur if the project-associated infrastructure improvements result in capture of market share by the project hotel and other hotels in the project zone from hotels elsewhere in a designating municipality or from other parts of the state. They also do not reflect higher payments as would occur if the project improvements attracted additional tourist visits from outside the state that otherwise would not have occurred anywhere in the state; revenue from such additional tourist visits paid to a project zone would not represent revenue foregone by the state.

Populations for Sections 351.152(5)-(7), (11), (13), (16)-(19), (21)-(23), (26), (31), (36), (38), (40), (42), and (45) of the Tax Code would be updated for these currently authorized cities. This analysis assumes each

amended subsection would continue to refer to the same, currently authorized, city.

Sections 351.152 (46)-(60) would authorize the following cities: (46) Allen; (47) Brownsville; (48) Seguin; (49) Mansfield; (50) Beaumont; (51) Bastrop; (52) Waco; (53) Little Elm; (54) Denton; (55) Grapevine; (56) Mesquite; (57) Terrell; (58) McKinney; (59) Kauffman; (60) Temple; (61) Austin; (62) Carthage; (63) Rosenberg; and (64) Eagle Pass.

The cities would be eligible to receive funds described in Section 351.156 which provides, in relevant part, that a municipality to which Section 351.152 applies is entitled to receive from the qualified hotel and each restaurant, bar, and retail establishment located in or connected to the hotel or the related qualified convention center facility, the state sales and use tax and the state hotel occupancy tax. Section 351.158 (Period of Entitlement) would entitle the cities to receive the revenue until the 10th anniversary of the date the qualified hotel to which the entitlement relates is open for initial occupancy.

The estimate is based on a projected opening date of September 1, 2026 (fiscal 2027) for each project, a comparison and review of revenues paid to the owners of extant qualified hotel projects, and estimated attributes of such prospective hotels. The estimates assume the authorizations are sought for use, and represent projected entitlements to state revenue should the projects occur. However, many authorizations previously enacted remain unutilized, as project development may prove infeasible even with the assurance of state subsidy.

McKinney would be authorized to locate their qualified establishment on land owned by any person and San Antonio on land owned by a nonprofit corporation, including a public facility corporation, that is acting on behalf or, or that is controlled by, a municipality.

The cities of San Antonio (1-a), The Colony (11-a), Allen (13), Brownsville (14), Mansfield (15), Little Elm(16), Denton (17), Mesquite (18), and McKinney (19), would be eligible to receive funds described in Sections 351.156 (Entitlement to Certain Tax Revenue) and 351.157 (Additional Entitlement for Certain Municipalities) which provides, in relevant part, that a municipality to which Section 351.152 applies is entitled to receive from the qualified hotel and each restaurant, bar, and retail establishment located in or connected to the hotel or the related qualified convention center facility, the state sales and use tax and the state hotel occupancy tax. Section 351.157(d) provides, in relevant part, that a municipality to which the section applies is entitled to receive the revenue derived from the state sales and use taxes, and local mixed beverage taxes generated, paid, and collected from a qualified establishment.

The recapture of lost state tax revenue provision would require any municipality with a qualified project to which this section applies to reimburse the state, at some point in time after the 20th anniversary of initial entitlement, any tax payments that are not sustained after the initial entitlement period of 10 years.

Repeal of Section 351.157(c) of the Tax Code would remove the municipality specific entitlements to revenue derived from specific types of establishments and would be replaced with Section 351.157(c-1) to provide all municipalities in this section with entitlement to revenue derived from restaurants, bars, retail establishments, and swimming pools and swimming facilities owned or operated by the related qualified hotel.

Local Government Impact

The municipalities to which this bill would apply and the relevant fiscal implications are detailed above.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JMc, SD, BRI, MOc, KK, CMA