

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 26 2011  
Date

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 2048 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

[Signature]  
Boo Dewell

[Signature]  
Jane Nelson

[Signature]  
Kel Seliger

[Signature]  
Juan Itino Bosa

[Signature]  
On the part of the Senate  
John Whitmire

[Signature]  
Lanham Lyne

[Signature]  
Sentronia Thompson

[Signature]  
Tom Murphy

[Signature]  
Don Flynn

[Signature]  
On the part of the House  
Naomi Gonzalez

## Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

H.B. No. 2048

A BILL TO BE ENTITLED

AN ACT

relating to the collection and enforcement of state and local hotel  
occupancy taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter F, Chapter 156, Tax Code, is amended  
by adding Section 156.2513 to read as follows:

Sec. 156.2513. ALLOCATION OF REVENUE TO CERTAIN  
MUNICIPALITIES AND COUNTIES. Not later than the last day of the  
month following a calendar quarter, the comptroller shall:

(1) compute the amount of revenue, excluding penalties  
and interest and amounts paid under protest, derived from the  
collection of taxes imposed by this chapter that resulted from  
documentation or other information described by Section 351.008 or  
352.008; and

(2) issue a warrant drawn on the general revenue fund  
in the amount of 20 percent of the revenue computed under  
Subdivision (1) to the municipality or county that provided the  
documentation or other information.

SECTION 2. Sections 351.004(a), (a-1), (a-2), and (a-3),  
Tax Code, are amended to read as follows:

(a) The [~~municipal attorney or other attorney acting for  
the~~] municipality may bring suit against a person who is required to  
collect the tax imposed by this chapter and pay the collections over  
to the municipality, and who has failed to file a tax report or pay

1 the tax when due, to collect the tax not paid or to enjoin the person  
2 from operating a hotel in the municipality until the tax is paid or  
3 the report filed, as applicable, as provided by the court's  
4 order. In addition to the amount of any tax owed under this  
5 chapter, the person is liable to the municipality for:

6 (1) the municipality's reasonable attorney's fees;

7 (2) the costs of an audit conducted under Subsection  
8 (a-1)(1), as determined by the municipality using a reasonable  
9 rate, but only if:

10 (A) the tax has been delinquent for at least two  
11 complete municipal fiscal quarters at the time the audit is  
12 conducted; and

13 (B) the municipality has not received a  
14 disbursement from the comptroller as provided by Section 156.2513  
15 related to the person's concurrent state tax delinquency described  
16 by Section 351.008; and

17 (3) a penalty equal to 15 percent of the total amount  
18 of the tax owed if the tax has been delinquent for at least one  
19 complete municipal fiscal quarter.

20 (a-1) If a person required to file a tax report under this  
21 chapter does not file the report as required by the municipality,  
22 the [~~municipal attorney or other attorney acting for the~~]  
23 municipality may determine the amount of tax due under this chapter  
24 by:

25 (1) conducting an audit of each hotel in relation to  
26 which the person did not file the report as required by the  
27 municipality; or

1           (2) using the tax report filed for the appropriate  
2 reporting period under Section 156.151 in relation to that hotel.

3           (a-2) If the person did not file a tax report under Section  
4 156.151 for that reporting period in relation to that hotel, the  
5 ~~[municipal attorney or other attorney acting for the]~~ municipality  
6 may estimate the amount of tax due by using the tax reports in  
7 relation to that hotel filed during the previous calendar year  
8 under this chapter or Section 156.151. An estimate made under this  
9 subsection is prima facie evidence of the amount of tax due for that  
10 period in relation to that hotel.

11           (a-3) The authority to conduct an audit under this section  
12 is in addition to any other audit authority provided by statute,  
13 charter, or ordinance. A municipality may directly perform an  
14 audit authorized by this section or contract with another person to  
15 perform the audit on an hourly rate or fixed-fee basis. A  
16 municipality shall provide at least 30 days' written notice to a  
17 person who is required to collect the tax imposed by this chapter  
18 with respect to a hotel before conducting an audit of the hotel  
19 under this section.

20           SECTION 3. Subchapter A, Chapter 351, Tax Code, is amended  
21 by adding Section 351.008 to read as follows:

22           Sec. 351.008. CONCURRENT STATE TAX DELINQUENCY. (a) If, as  
23 a result of an audit conducted under Section 351.004, a  
24 municipality obtains documentation or other information showing a  
25 failure to collect or pay when due both the tax imposed by this  
26 chapter and the tax imposed by Chapter 156 on a person who pays for  
27 the right to occupy a room or space in a hotel, the municipality

1 shall notify and submit the relevant information to the  
2 comptroller.

3 (b) The comptroller shall review the information submitted  
4 by a municipality under Subsection (a) and determine whether to  
5 proceed with collection and enforcement efforts. If the  
6 information results in the collection of a delinquent tax under  
7 Chapter 156 and the assessment has become administratively final,  
8 the comptroller shall distribute a percentage of the amount  
9 collected to the municipality as provided by Section 156.2513 to  
10 defray the cost of the municipal audit.

11 SECTION 4. Section 352.004, Tax Code, is amended by adding  
12 Subsection (e) to read as follows:

13 (e) If a person required to file a tax report under this  
14 chapter does not file the report as required by the county, the  
15 county may determine the amount of tax due under this chapter by  
16 conducting an audit of each hotel in relation to which the person  
17 did not file the report as required by the county. A county may  
18 directly perform an audit authorized under this subsection or  
19 contract with another person to perform the audit on an hourly rate  
20 or fixed-fee basis. A county shall provide at least 30 days'  
21 written notice to a person who is required to collect the tax  
22 imposed by this chapter with respect to a hotel before conducting an  
23 audit of the hotel under this subsection.

24 SECTION 5. Subchapter A, Chapter 352, Tax Code, is amended  
25 by adding Section 352.008 to read as follows:

26 Sec. 352.008. CONCURRENT STATE TAX DELINQUENCY. (a) If, as  
27 a result of an audit conducted under Section 352.004, a county

1 obtains documentation or other information showing a failure to  
2 collect or pay when due both the tax imposed by this chapter and the  
3 tax imposed by Chapter 156 on a person who pays for the right to  
4 occupy a room or space in a hotel, the county shall notify and  
5 submit the relevant information to the comptroller.

6 (b) The comptroller shall review the information submitted  
7 by a county under Subsection (a) and determine whether to proceed  
8 with collection and enforcement efforts. If the information  
9 results in the collection of a delinquent tax under Chapter 156 and  
10 the assessment has become administratively final, the comptroller  
11 shall distribute a percentage of the amount collected to the county  
12 as provided by Section 156.2513 to defray the cost of the county  
13 audit.

14 SECTION 6. The change in law made by this Act applies only  
15 to an audit performed by a municipality or county on or after the  
16 effective date of this Act. An audit performed by a municipality or  
17 county before the effective date of this Act is governed by the law  
18 in effect immediately before that date, and that law is continued in  
19 effect for that purpose.

20 SECTION 7. This Act takes effect September 1, 2011.

**House Bill 2048**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Amends Subchapter F, Chapter 156, Tax Code, by adding Section 156.2513, ALLOCATION OF REVENUE TO CERTAIN MUNICIPALITIES AND COUNTIES, as follows:

Sec. 156.2513. Requires the comptroller, not later than the last day of the month following a calendar quarter, to:

(1) compute the amount of revenue, excluding penalties and interest, derived from the collection of taxes imposed by this chapter that resulted from documentation or other information described by Section 351.008 or 352.008; and

(2) issue a warrant drawn on the general revenue fund in the amount of 20 percent of the revenue computed under Subdivision (1) to the municipality or county that provided the documentation or other information.

SECTION 2. Amends Sections 351.004(a), (a-1), (a-2), and (a-3), Tax Code, as follows:

(a) Specifies that the authority to take certain actions against a person who is required to collect the municipal hotel occupancy tax and pay the collections over to the municipality and who has failed to file a tax report or pay the tax when due, including actions such as bringing suit to collect unpaid taxes, enjoining the person from operating a hotel in the municipality, and conducting an audit of each hotel in relation to which the person failed to file the required report or using tax reports filed in relation to the hotel to determine the amount of tax due, is vested in the municipality, rather than in the municipal attorney or other attorney acting for the municipality. Makes such a person's liability to the municipality for the costs of an audit contingent on the municipality having not received a disbursement from the comptroller of public accounts as provided by the bill's

SENATE VERSION (IE)

SECTION 1. Same as House version except in (1) also excludes amounts paid under protest in addition to penalties and interest. [FA1(1)]

SECTION 2. Same as House version.

CONFERENCE

SECTION 1. Same as Senate version.

SECTION 2. Same as House version.

**House Bill 2048**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

provisions related to the person's concurrent state tax delinquency and makes the person's liability to the municipality for a certain penalty contingent on the tax having been delinquent for at least one complete municipal fiscal quarter.

(a-1) Makes a conforming change

(a-2) Makes a conforming change.

(a-3) Authorizes a municipality to directly perform an audit authorized by this section or contract with another person to perform the audit on an hourly rate or fixed-fee basis and requires a municipality to provide at least 30 days' written notice to a person who is required to collect the tax imposed by this chapter with respect to a hotel before conducting an audit of the hotel under this section.

SECTION 3. Amends Subchapter A, Chapter 351, Tax Code, by adding Section 351.008, CONCURRENT STATE TAX DELINQUENCY, as follows:

(a) Requires a municipality, if, as a result of an audit conducted under Section 351.004, the municipality obtains documentation or other information showing a failure to collect or pay when due both the tax imposed by this chapter and the tax imposed by Chapter 156 on a person who pays for the right to occupy a room or space in a hotel, to notify and submit the relevant information to the comptroller.

(b) Requires the comptroller shall review the information submitted by a municipality under Subsection (a) and determine whether to proceed with collection and enforcement efforts. Requires the comptroller, if the information results in the collection of a delinquent tax under Chapter 156, to distribute a percentage of the amount collected to the municipality as provided by Section 156.2513 to defray the

SECTION 3. Same as House version except in (b) requires the comptroller's assessment to be administratively final before the comptroller is required to distribute a percentage of the amount collected to the municipality to defray the cost of a municipal audit. [FA1(2)]

SECTION 3. Same as Senate version.



**House Bill 2048**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

cost of the municipal audit.

SECTION 4. Amends Section 352.004, Tax Code, by adding Subsection (e) as follows:

(e) Authorizes a county, if a person required to file a tax report under this chapter does not file the report as required by the county, to determine the amount of tax due under this chapter by conducting an audit of each hotel in relation to which the person did not file the report as required by the county. Authorizes a county to directly perform an audit authorized under this subsection or contract with another person to perform the audit on an hourly rate or fixed-fee basis. Requires a county to provide at least 30 days' written notice to a person who is required to collect the tax imposed by this chapter with respect to a hotel before conducting an audit of the hotel under this subsection.

SECTION 5. Amends Subchapter A, Chapter 352, Tax Code, is amended by adding Section 352.008, CONCURRENT STATE TAX DELINQUENCY, as follows:

(a) Requires a county, if, as a result of an audit conducted under Section 352.004, the county obtains documentation or other information showing a failure to collect or pay when due both the tax imposed by this chapter and the tax imposed by Chapter 156 on a person who pays for the right to occupy a room or space in a hotel, to notify and submit the relevant information to the comptroller.

(b) Requires the comptroller to review the information submitted by a county under Subsection (a) and determine whether to proceed with collection and enforcement efforts. Requires the comptroller, if the information results in the collection of a delinquent tax under Chapter 156, to distribute

SECTION 4. Same as House version.

SECTION 4. Same as House version.

SECTION 5. Same as House version except in (b) requires the comptroller's assessment to be administratively final before the comptroller is required to distribute a percentage of the amount collected to the county to defray the cost of the county audit. [FA1(3)]

SECTION 5. Same as Senate version.

**House Bill 2048**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

a percentage of the amount collected to the county as provided by Section 156.2513 to defray the cost of the county audit.

SECTION 6. The change in law made by this Act applies only to an audit performed by a municipality or county on or after the effective date of this Act. An audit performed by a municipality or county before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2011.

No equivalent provision.

SENATE VERSION (IE)

SECTION 6. Same as House version.

SECTION 7. Same as House version.

SECTION \_\_. (a) Section 351.101(a), Tax Code, as amended by Chapters 402 (H.B. 1789), 1220 (S.B. 1247), and 1322 (H.B. 3098), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended. [FA2]

CONFERENCE

SECTION 6. Same as House version.

SECTION 7. Same as House version.

Same as House version.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 27, 2011**

**TO:** Honorable David Dewhurst, Lieutenant Governor, Senate  
Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB2048** by Lyne (Relating to the collection and enforcement of state and local hotel occupancy taxes.), **Conference Committee Report**

**There could be an indeterminate revenue gain to the state from the provisions of the bill.**

The bill would amend Chapters 156, 351, and 352 of the Tax Code, regarding the collection and enforcement of state and local hotel occupancy taxes.

The bill would require that a municipality or a county notify the Comptroller's Office if they find that state hotel tax was underpaid or underreported as a result of a local audit. The Comptroller would review the data provided by the municipality or county and decide whether or not to pursue collection. If the state does collect tax based on data from a local audit, the Comptroller must pay the municipality or county an amount equal to 20 percent of the amount of state hotel tax collected (not including penalty and interest). A municipality or county would not be eligible for the 20 percent payment from the Comptroller if the information obtained resulted from an audit performed on a contingent fee basis.

The bill would authorize municipalities and counties to conduct, or contract with third parties to conduct, audits of hotels that do not file a tax report as required by Chapter 351 or Chapter 352 of the Tax Code. The bill would require cities and counties to provide at least a 30-day written notice prior to conducting an audit of the hotel's records.

By requiring municipalities and counties to notify the Comptroller's Office when their audits reveal state hotel tax deficiencies, it is possible the state may receive additional hotel occupancy tax revenue.

The bill would take effect September 1, 2011.

**Local Government Impact**

There could be an indeterminate fiscal impact to units of local government from the provisions of the bill.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, AG, KK, SD

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**TAX/FEE EQUITY NOTE**

**82ND LEGISLATIVE REGULAR SESSION**

**May 27, 2011**

**TO:** Honorable David Dewhurst, Lieutenant Governor, Senate  
Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB2048** by Lyne (Relating to the collection and enforcement of state and local hotel occupancy taxes. ), **Conference Committee Report**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

**Source Agencies:**

**LBB Staff:** JOB, KK