

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/24/13

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 3572 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.

<u>William</u> Williams	<u>Gary E. G. G. G.</u> Hilderbrand
<u>J. D. Hargis</u> HINDJOSA	<u>D. Schum</u> Bohac
<u>[Signature]</u>	<u>Craig Eiland</u> Eiland
<u>Hesari</u>	<u>[Signature]</u> Huempel
<u>Lee Lucio Jr</u> LUCIO	<u>Robb Jeffis</u>
<u>Huffman</u> On the part of the Senate	On the part of the House <u>Sheffield</u>

**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. 3572

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the administration, collection, and enforcement of  
3 taxes on mixed beverages; imposing a tax on sales of mixed  
4 beverages; decreasing the rate of the current tax on mixed  
5 beverages.

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

7 SECTION 1. Section 151.308(a), Tax Code, is amended to read  
8 as follows:

9 (a) The following are exempted from the taxes imposed by  
10 this chapter:

11 (1) oil as taxed by Chapter 202;

12 (2) sulphur as taxed by Chapter 203;

13 (3) motor fuels and special fuels as defined, taxed,  
14 or exempted by Chapter 162;

15 (4) cement as taxed by Chapter 181;

16 (5) motor vehicles, trailers, and semitrailers as  
17 defined, taxed, or exempted by Chapter 152, other than a mobile  
18 office or an oilfield portable unit, as those terms are defined by  
19 Section 152.001;

20 (6) mixed beverages, ice, or nonalcoholic beverages  
21 and the preparation or service of these items if the receipts are  
22 taxable by Subchapter B, Chapter 183, or the items are taxable by  
23 Subchapter B-1, Chapter 183;

24 (7) alcoholic beverages when sold to the holder of a

1 private club registration permit or to the agent or employee of the  
2 holder of a private club registration permit if the holder or agent  
3 or employee is acting as the agent of the members of the club and if  
4 the beverages are to be served on the premises of the club;

5 (8) oil well service as taxed by Subchapter E, Chapter  
6 191; and

7 (9) insurance premiums subject to gross premiums  
8 taxes.

9 SECTION 2. The heading to Subtitle G, Title 2, Tax Code, is  
10 amended to read as follows:

11 SUBTITLE G. GROSS RECEIPTS AND MIXED BEVERAGE TAXES

12 SECTION 3. The heading to Chapter 183, Tax Code, is amended  
13 to read as follows:

14 CHAPTER 183. MIXED BEVERAGE TAXES [~~TAX~~]

15 SECTION 4. Section 183.001(b), Tax Code, is amended by  
16 adding Subdivision (3) to read as follows:

17 (3) "Sales price" has the meaning assigned by Section  
18 151.007, as applicable.

19 SECTION 5. The heading to Subchapter B, Chapter 183, Tax  
20 Code, is amended to read as follows:

21 SUBCHAPTER B. MIXED BEVERAGE GROSS RECEIPTS TAX

22 SECTION 6. Section 183.021, Tax Code, is amended to read as  
23 follows:

24 Sec. 183.021. TAX IMPOSED ON GROSS RECEIPTS OF PERMITTEE  
25 FROM MIXED BEVERAGES. A tax at the rate of 6.7 [~~14~~] percent is  
26 imposed on the gross receipts of a permittee received from the sale,  
27 preparation, or service of mixed beverages or from the sale,

1 preparation, or service of ice or nonalcoholic beverages that are  
2 sold, prepared, or served for the purpose of being mixed with an  
3 alcoholic beverage and consumed on the premises of the permittee.

4 SECTION 7. Sections 183.0212(a) and (b), Tax Code, are  
5 amended to read as follows:

6 (a) For informational purposes only, a permittee may  
7 provide that each sales invoice, billing, service check, ticket, or  
8 other receipt to a customer for the purchase of an item subject to  
9 taxation under this subchapter [~~chapter~~] include:

10 (1) a separate statement disclosing the amount of tax  
11 to be paid by the permittee under this subchapter [~~chapter~~] in  
12 relation to that item; or

13 (2) a statement of the mixed beverage taxes,  
14 consisting of the combined amount of the tax to be paid by the  
15 permittee under this subchapter in relation to that item and the  
16 amount of tax imposed under Subchapter B-1 on that item.

17 (b) A [~~The separate~~] statement under Subsection (a)(1) must  
18 clearly disclose the amount of tax payable by the permittee.

19 SECTION 8. Sections 183.024(a) and (d), Tax Code, are  
20 amended to read as follows:

21 (a) A permittee who fails to file a report as required by  
22 this subchapter [~~chapter~~] or who fails to pay a tax imposed by this  
23 subchapter [~~chapter~~] when due shall pay five percent of the amount  
24 due as a penalty, and if the permittee fails to file the report or  
25 pay the tax within 30 days after the day the tax or report is due,  
26 the permittee shall pay an additional five percent of the amount due  
27 as an additional penalty.

1 (d) In addition to any other penalty authorized by this  
2 section, a permittee who fails to file a report as required by this  
3 subchapter [~~chapter~~] shall pay a penalty of \$50. The penalty  
4 provided by this subsection is assessed without regard to whether  
5 the permittee subsequently files the report or whether any taxes  
6 were due from the permittee for the reporting period under the  
7 required report.

8 SECTION 9. Section 183.053, Tax Code, is transferred to  
9 Subchapter B, Chapter 183, Tax Code, redesignated as Section  
10 183.025, Tax Code, and amended to read as follows:

11 Sec. 183.025 [~~183.053~~]. SECURITY REQUIREMENT. (a) A  
12 permittee subject to the tax imposed by this subchapter [~~chapter~~]  
13 must comply with the security requirements imposed by Chapter 151  
14 except that a permittee is not required to comply with Section  
15 151.253(b).

16 (b) The total of bonds, certificates of deposit, letters of  
17 credit, or other security determined to be sufficient by the  
18 comptroller of a permittee subject to the tax imposed by this  
19 subchapter [~~chapter~~] shall be in an amount that the comptroller  
20 determines to be sufficient to protect the fiscal interests of the  
21 state. The comptroller may not set the amount of security at less  
22 than \$1,000 or more than the greater of \$100,000 or four times the  
23 amount of the permittee's average monthly tax liability.

24 SECTION 10. Section 183.054, Tax Code, is transferred to  
25 Subchapter B, Chapter 183, Tax Code, redesignated as Section  
26 183.026, Tax Code, and amended to read as follows:

27 Sec. 183.026 [~~183.054~~]. AUDIT FREQUENCY. The comptroller

1 shall have the discretion to determine the frequency of mixed  
2 beverage tax audits under this subchapter. In determining the  
3 frequency of the audit the comptroller may consider the following  
4 factors:

- 5 (1) reasonable and prudent accounting standards;
- 6 (2) the audit history of the permittee;
- 7 (3) the effect on state revenues; and
- 8 (4) other factors the comptroller deems appropriate.

9 SECTION 11. Section 183.055, Tax Code, is transferred to  
10 Subchapter B, Chapter 183, Tax Code, redesignated as Section  
11 183.027, Tax Code, and amended to read as follows:

12 Sec. 183.027 [~~183.055~~]. CREDITS AND REFUNDS FOR BAD DEBTS.

13 (a) A permittee may withhold the payment of the tax under this  
14 subchapter on a portion of the gross receipts that remains unpaid by  
15 a purchaser if:

16 (1) during the reporting period in which the mixed  
17 beverage is sold, the permittee determines that the unpaid portion  
18 will remain unpaid;

19 (2) the permittee enters the unpaid portion of the  
20 sales gross receipts in the permittee's books as a bad debt; and

21 (3) the bad debt is claimed as a deduction for federal  
22 tax purposes during the same or a subsequent reporting period.

23 (b) If the portion of a debt determined to be bad under  
24 Subsection (a) is paid, the permittee shall report and pay the tax  
25 on the portion during the reporting period in which payment is made.

26 (c) A permittee is entitled to credit or reimbursement for  
27 taxes paid on the portion of the gross receipts determined to be

1 worthless and actually charged off for federal income tax purposes.

2 SECTION 12. Chapter 183, Tax Code, is amended by adding  
3 Subchapter B-1 to read as follows:

4 SUBCHAPTER B-1. MIXED BEVERAGE SALES TAX

5 Sec. 183.041. TAX IMPOSED ON SALES OF MIXED BEVERAGES AND  
6 RELATED ITEMS. (a) A tax is imposed on each mixed beverage sold,  
7 prepared, or served by a permittee in this state and on ice and each  
8 nonalcoholic beverage sold, prepared, or served by a permittee in  
9 this state for the purpose of being mixed with an alcoholic beverage  
10 and consumed on the premises of the permittee.

11 (b) The rate of the tax is 8.25 percent of the sales price of  
12 the item sold, prepared, or served.

13 Sec. 183.042. DISCLOSURE OF TAX. A permittee may provide  
14 that a sales invoice, billing, service check, ticket, or other  
15 receipt to a customer for the purchase of an item subject to  
16 taxation under this subchapter include:

17 (1) a statement that mixed beverage sales tax is  
18 included in the sales price;

19 (2) a separate statement of the amount of tax imposed  
20 under this subchapter on that item;

21 (3) a statement of the mixed beverage taxes,  
22 consisting of the combined amount of the tax to be paid by the  
23 permittee under Subchapter B in relation to that item and the amount  
24 of tax imposed under this subchapter on that item; or

25 (4) a statement of the combined amount of taxes  
26 imposed under this subchapter and Chapter 151 on all items listed on  
27 the invoice, billing, service check, ticket, or other receipt.

1       Sec. 183.043. APPLICABILITY OF OTHER LAW. (a) Except as  
2 otherwise provided by this section:

3           (1) the tax imposed by this subchapter is  
4 administered, collected, and enforced in the same manner as the tax  
5 under Chapter 151 is administered, collected, and enforced; and

6           (2) Chapter 151 applies to the tax imposed by this  
7 subchapter in the same manner as Chapter 151 applies to the tax  
8 imposed under Section 151.051.

9           (b) Sections 151.423 and 151.424 do not apply to the tax  
10 imposed by this subchapter.

11           (c) A sale to a permittee of an item described by Section  
12 183.021 is not a sale for resale for purposes of Section 151.302 if  
13 the item is mixed with or becomes a component part of a mixed  
14 beverage subject to taxation under this subchapter that is served  
15 without any consideration paid to the permittee.

16           (d) An item subject to tax under this subchapter is exempt  
17 from the taxes imposed under Subtitle C, Title 3.

18       SECTION 13. Section 183.051, Tax Code, as effective  
19 September 1, 2013, is amended to read as follows:

20       Sec. 183.051. MIXED BEVERAGE TAX CLEARANCE FUND. (a) Not  
21 later than the last day of the month following a calendar quarter,  
22 the comptroller shall calculate the total amount of taxes received  
23 under Subchapters B and B-1 during the quarter from permittees  
24 outside an incorporated municipality within each county and the  
25 total amount received from permittees within each incorporated  
26 municipality in each county.

27       (b) The comptroller shall issue to each county described in



1 Subsection (a) a warrant drawn on the general revenue fund in an  
2 amount appropriated by the legislature that may not be less than  
3 10.7143 percent of the taxes received [~~receipts~~] from permittees  
4 within the county during the quarter and shall issue to each  
5 incorporated municipality described in Subsection (a) a warrant  
6 drawn on that fund in an amount appropriated by the legislature that  
7 may not be less than 10.7143 percent of the taxes received  
8 [~~receipts~~] from permittees within the incorporated municipality  
9 during the quarter.

10 SECTION 14. Section 183.052, Tax Code, is amended to read as  
11 follows:

12 Sec. 183.052. CONFLICT OF RULES. If a rule or policy  
13 adopted by the Texas Alcoholic Beverage Commission [~~commission~~]  
14 conflicts with a rule adopted by the comptroller for the  
15 application, enforcement, or collection of a [~~the~~] tax imposed by  
16 this chapter, the comptroller's rule prevails. A conflicting rule  
17 or policy adopted by the commission is invalid to the extent of the  
18 inconsistency. If the comptroller determines that a rule or policy  
19 adopted by the commission conflicts with one adopted by the  
20 comptroller relating to the application, enforcement, or  
21 collection of a [~~the~~] tax imposed by this chapter, the comptroller  
22 shall notify the commission in writing of the determination. After  
23 receipt of the notification, the commission must amend or repeal  
24 the conflicting rule or policy not later than the 90th day after the  
25 date of notification.

26 SECTION 15. The change in law made by this Act does not  
27 affect tax liability accruing before the effective date of this

H.B. No. 3572

1 Act. That liability continues in effect as if this Act had not been  
2 enacted, and the former law is continued in effect for the  
3 collection of taxes due and for civil and criminal enforcement of  
4 the liability for those taxes.

5 SECTION 16. This Act takes effect January 1, 2014.

**House Bill 3572**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (IE)	CONFERENCE
No equivalent provision.	SECTION __. Section 106.14, Alcoholic Beverage Code, is amended by adding Subsection (b-1) relating to a prohibition on the denial of approval of a seller training program on a specified ground. [FA1]	Same as House version.
SECTION 1. Amends Section 151.308(a), Tax Code, setting out certain items that are exempt from the sales and use tax.	SECTION 1. Same as House version except <i>does not exempt from the sales and use tax gas subject to the gas production tax and compressed and liquefied natural gas defined, taxed, or exempted by statutory provisions governing motor fuel taxes.</i>	SECTION 1. Same as Senate version.
SECTION 2. The heading to Subtitle G, Title 2, Tax Code, is amended.	SECTION 2. Same as House version.	SECTION 2. Same as House version.
SECTION 3. Amends the heading to Chapter 183, Tax Code, relating to mixed beverage taxes.	SECTION 3. Same as House version.	SECTION 3. Same as House version.
SECTION 4. Section 183.001(b), Tax Code, is amended.	SECTION 4. Same as House version.	SECTION 4. Same as House version.
SECTION 5. The heading to Subchapter B, Chapter 183, Tax Code, is amended.	SECTION 5. Same as House version.	SECTION 5. Same as House version.
SECTION 6. Section 183.021, Tax Code, is amended.	SECTION 6. Same as House version.	SECTION 6. Same as House version.
SECTION 7. Sections 183.0212(a) and (b), Tax Code, are amended.	SECTION 7. Same as House version.	SECTION 7. Same as House version.
SECTION 8. Sections 183.024(a) and (d), Tax Code, are amended.	SECTION 8. Same as House version.	SECTION 8. Same as House version.
SECTION 9. Section 183.053, Tax Code, is transferred to	SECTION 9. Same as House version.	SECTION 9. Same as House version.

**House Bill 3572**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (IE)	CONFERENCE
Subchapter B, Chapter 183, Tax Code, redesignated as Section 183.025, Tax Code, and amended.		
SECTION 10. Section 183.054, Tax Code, is transferred to Subchapter B, Chapter 183, Tax Code, redesignated as Section 183.026, Tax Code, and amended.	SECTION 10. Same as House version.	SECTION 10. Same as House version.
SECTION 11. Section 183.055, Tax Code, is transferred to Subchapter B, Chapter 183, Tax Code, redesignated as Section 183.027, Tax Code, and amended.	SECTION 11. Same as House version.	SECTION 11. Same as House version.
SECTION 12. Chapter 183, Tax Code, is amended by adding Subchapter B-1.	SECTION 12. Same as House version.	SECTION 12. Same as House version.
SECTION 13. Section 183.051, Tax Code, as effective September 1, 2013, is amended.	SECTION 13. Same as House version.	SECTION 13. Same as House version.
SECTION 14. Section 183.052, Tax Code, is amended.	SECTION 14. Same as House version.	SECTION 14. Same as House version.
SECTION 15. Saving provision.	SECTION 15. Same as House version.	SECTION 15. Same as House version.
SECTION 16. Effective date.	SECTION 16. Same as House version.	SECTION 16. Same as House version.

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

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 24, 2013**

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

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3572** by Hilderbran (Relating to the administration, collection, and enforcement of taxes on mixed beverages; imposing a tax on sales of mixed beverages; decreasing the rate of the current tax on mixed beverages.), **Conference Committee Report**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3572, Conference Committee Report: a negative impact of (\$2,450,000) through the biennium ending August 31, 2015.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	(\$2,225,000)
2015	(\$225,000)
2016	(\$225,000)
2017	(\$225,000)
2018	(\$225,000)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Change in Number of State Employees from FY 2013
2014	(\$2,225,000)	5.0
2015	(\$225,000)	5.0
2016	(\$225,000)	5.0
2017	(\$225,000)	5.0
2018	(\$225,000)	5.0

**Fiscal Analysis**

The bill would amend Chapter 183 of the Tax Code, regarding the mixed beverage tax, to reduce the rate of the tax on the gross receipts from alcohol sales of mixed beverage permittees from 14 percent to 6.7 percent.

The bill also would create a mixed beverage sales tax at a rate of 8.25 percent of the sales price of all drinks that are subject to the mixed beverage gross receipts tax. The mixed beverage sales tax would be administered, collected, and enforced in the same manner as the limited sales and use tax. Timely filer deductions and tax prepayment discounts related to the limited sales and use tax would not apply to the mixed beverage sales tax. Also not applicable would be local option sales taxes under Subtitle C, Title 3, Tax Code. However, the local allocations from the mixed beverage sales tax would be distributed in the same manner as the mixed beverage gross receipts tax.

The bill would take effect January 1, 2014.

### **Methodology**

This analysis assumes the new 8.25 percent mixed beverage sales tax, a change to the mixed beverage gross receipts tax rate from 14 percent to 6.7 percent, and that mixed beverage permittees would not change their current menu prices for mixed beverages. Due to an expected increase in their outlays, consumers are expected to purchase somewhat fewer drinks. In summary, the new method for taxing these beverages—a slightly higher overall rate structure and slightly fewer taxable drink purchases—would have no significant net fiscal impact.

The Comptroller's office estimates that they would need funding to hire additional enforcement field collection staff to handle the anticipated increase in workload and programming and system support costs to implement the new tax.

### **Technology**

The Comptroller's office estimates a one-time technology cost of \$2,000,000 in fiscal 2014 for programming and system support costs.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 458 Alcoholic Beverage Commission

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

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

**TAX/FEE EQUITY NOTE**

**83RD LEGISLATIVE REGULAR SESSION**

**May 24, 2013**

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

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3572** by Hilderbran (Relating to the administration, collection, and enforcement of taxes on mixed beverages; imposing a tax on sales of mixed beverages; decreasing the rate of the current tax on mixed beverages.), **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.

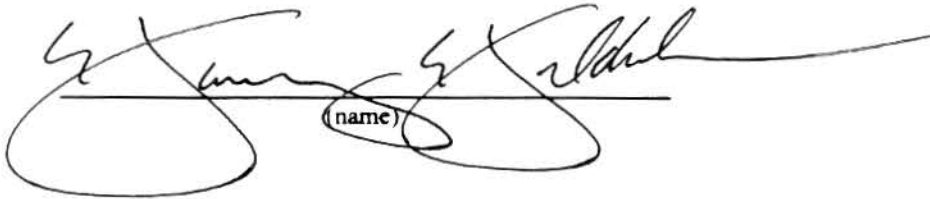
**Source Agencies:**

**LBB Staff:** UP, KK

## Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 3572 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

  
\_\_\_\_\_  
(name)

5/24/13  
(date)