SUBJECT: Collection and enforcement of state and local hotel taxes

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 9 ayes — Hilderbran, Otto, Christian, Gonzalez, Lyne, Murphy, Ritter, Villarreal, Woolley

0 nays

2 absent — Elkins, Martinez Fischer

WITNESSES: For — Russell Needler, City of Austin; (*Registered, but did not testify:* Fran Mancia, MuniServices; Jim Allison, County Judges and Commissioners Association of Texas; Donald Lee, Texas Conference of Urban Counties)

Against — None

BACKGROUND: Tax Code, ch. 156 imposes an occupancy tax on hotel rooms costing $15 or more each day. The state hotel tax is 6 percent of the cost of the room. Tax Code, ch. 351 and ch. 352 allow cities and counties to levy hotel taxes on rooms costing $2 or more each day. Hotel operators collect these taxes and remit them to the comptroller.

DIGEST: CSHB 2048 would allow a municipality or county to audit a hotel for compliance with the hotel tax. The municipality or county could perform the audit directly or via contract on an hourly or fixed-fee basis, but would have to provide at least 30 days' written notice. If it discovered that the tax was underpaid or underreported, then the municipality or county would have to report the findings to the comptroller. If the comptroller, after reviewing the audit information, decided to proceed with collection efforts and ultimately collected a delinquent tax, then the comptroller would pay the municipality or county 20 percent of the amount of the tax, not including penalty and interest, that was recovered as a result of the audit.

In addition to any tax owed, the hotel would have to pay the city's attorney's fees; the cost of the audit if the tax had been delinquent for at least two complete municipal quarters at the time of the audit and the city had not yet received reimbursement from the comptroller; and a penalty of

15 percent of the total owed tax if the tax had been delinquent for at least one complete municipal quarter.

The bill would take effect on September 1, 2011, and would affect only audits performed on or after this date.

SUPPORTERS SAY:

CSHB 2048 would provide an additional enforcement mechanism to collect delinquent hotel taxes. According to the fiscal note, these increased collections would raise additional revenue for both state and local governments. The bill would give cities and counties additional audit capacities and encourage local governments to share their findings with the Comptroller's Office when a delinquency or underpayment was found. The bill would incentivize this information sharing by allowing cities and counties to receive 20 percent of the state's recovered hotel tax.

CSHB 2048 would help the comptroller more effectively target the state's limited tax enforcement resources. Local governments likely would target likely offenders with audits, and these findings would assist the comptroller in indentifying noncompliance or delinquency. This targeted use of the comptroller's resources is superior to broad audits, which cost more money. This targeted approach would help to focus audits on bad actors and would lessen some of the audit burden on compliant hotels.

It is appropriate to involve local governments in the hotel tax auditing process because they know their areas well and have a sense of the tax streams and what should be expected. This will allow them to make target audits of likely offenders, and this insight will assist the comptroller's statewide tax enforcement efforts.

The bill would address concerns about fishing expeditions by contracted auditors by requiring that auditors be paid on an hourly or fixed-fee, rather than contingent, basis. This would also help to preserve the objectivity of any contracted auditors. The bill also would require that local governments give hotels 30 days' notice before an audit. The tax would have to be delinquent for at least one municipal quarter before the extra 15-percent penalty was charged. Furthermore, local governments would not be rewarded twice for their efforts. The bill would allow local governments to receive, in addition to taxes owed, either the cost of the audit or the 20-percent share, but not both.

OPPONENTS SAY:

A better approach would be to reinforce the comptroller's auditing efforts rather than encouraging more entities to conduct more audits. The comptroller already has a centralized, streamlined, and efficient hotel tax auditing process. However, the bill would increase the number of audits that hotels would be forced to undergo because local governments would be incentivized to conduct more of them. Audit compliance costs time and money. The bill should focus on better audits by the comptroller, not more audits all around.