

Hotel Occupancy Tax and the Arts in Texas: A 2004 Review of Legislation and Funding

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Introduction

Following recent legislative changes to the tax law and increased activity by the Texas Hotel and Lodging Association, many municipalities and arts organization are concerned about their ability to fund the arts through municipally collected hotel occupancy tax. There has been much concern and confusion about what can be funded with hotel occupancy tax revenue and how changes in these funding levels will affect the arts in Texas. During the summer of 2004, the Texas Commission on the Arts conducted a review of hotel occupancy tax and the arts in Texas. This review had three components: (1) a review of the current legislation concerning the collection and allocation of municipal hotel occupancy tax, (2) a historical analysis of changes to the tax code since 1977, when the legislature first allowed hotel occupancy tax revenue to be spent on the arts, and (3) a survey of local arts agencies to determine how much hotel occupancy tax revenue is spent on the arts, what activities that revenue supports, and how funding has changed since 2000.

Current Hotel Occupancy Tax Legislation

The rules and regulations that govern the collection and allocation of municipal hotel occupancy tax (HOT) are located in Chapter 351 of the Texas Tax Code (see Appendix A). A number of sections affect, either directly or indirectly, the ability of municipalities to spend HOT revenue on the arts

Approved Uses of HOT Revenue

Section 351.101 describes the approved uses of HOT revenue. These uses define what projects, activities, or organizations may receive municipal HOT revenue. Any use not included in the tax law may not be funded with these revenues.

The law establishes a “two-part test” for the spending of HOT revenue. Any project, activity, or organization must meet *both* criteria of the test in order to legally receive HOT funding. A project, activity, or organization meeting only one of the criteria is not eligible for HOT funding. The first part of the test states that “revenue from the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry.”¹ Later, the statute also states that “revenue derived from the tax authorized by this chapter shall be expended in a manner directly enhancing and promoting tourism and the convention and hotel industry.”² Although the exact meaning of “directly” in the last statement is unclear, it is obviously a further restriction on how HOT revenue can be spent.

If a municipality determines that a project, activity, or organization meets the first part of the

test, they must also determine that it meets the second part of the test in order to allocate HOT revenue. The second test establishes six approved uses for HOT funding. Any project, activity, or organization that promotes tourism and the hotel and convention industry must also fall into one of these six approved uses in order to receive HOT funding. The first and second uses are related to the construction, improvement, maintenance, and operation of convention center facilities and the registration of convention delegates; the sixth approved use is related to sporting events.³ The other uses, however, cover almost all of the possible activities of arts organizations.

Although not often used to secure HOT funding for the arts, the third approved use of HOT revenue is “for advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity.”⁴ Advertising done by arts organization that is targeted at people who live outside of the municipality should be eligible for funding under this approved use. This could include marketing pieces assembled by arts organizations for a convention and visitor’s bureau or packages highlighting events and activities for conference attendees. For those arts organizations already receiving the maximum amount of HOT funding allowed for the arts, this could be a possible way to receive increased funding.

¹ Texas Tax Code, Sec. 351.101 (a).

² Texas Tax Code, Sec. 351.101 (b).

³ See Texas Tax Code, Sec. 351.101 (a) (1), (2), and (6), respectively.

⁴ Texas Tax Code, Sec. 351.101 (a) (3).

The fourth and fifth approved uses of HOT funds, which were added as part of the Lalor Law in 1977 (see Appendix B for the complete text of the Lalor Law; the Lalor Law will also be discussed in the section on historical changes to HOT legislation), are the most common avenues for arts organizations to receive government funding in Texas. The fourth approved use allows HOT funding for

the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms.⁵

Despite some attempts to limit the scope of this approved use throughout subsequent legislative sessions, it has retained the same level of inclusiveness as when originally passed in 1977. In fact,

the broad scope of this clause assures that almost all arts activities fall within it, although those activities now also have to pass the first part of the test as well: the promotion of the tourism and the hotel and convention industry.

The fifth approved use of HOT funding concerns historical preservation. Like the arts, the definition of historical preservation was extremely inclusive under the original Lalor Law. Now, however, HOT funding is limited to

historical restoration or preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums.⁶

Furthermore, HOT funding is limited to historic preservation projects that are “at or in the immediate vicinity of convention center facilities or visitor information center” or are “located elsewhere in the municipality of its vicinity that would be frequented by tourists and convention delegates.”⁷ Although many arts organizations are involved in historical preservation, the restrictions make it difficult to use HOT revenue to develop new historical properties or districts in areas that are not currently being visited by tourists.

¹ Texas Tax Code, Sec. 351.101 (a) (4).

² Texas Tax Code, Sec. 351.101 (a) (5).

³ Texas Tax Code, Sec. 351.101 (a) (4) (A) and (B), respectively.

The tax code also specifically allows HOT revenue to be spent for “day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs,”⁸ so long as those costs are directly associated with expenditures that pass the two-part test. This means that arts organizations may spend HOT revenue on general operations, so long as they are directly related to tourism and the hotel and convention industry.

Definitions

Section 351.001 defines a number of terms that appear in the subsequent legislation. These definitions are in many cases critical to what projects, activities, or organizations can receive HOT funding. Section 351.101 (2) defines “convention center facilities” and a “convention center complex.” Under the Lalor Law, civic theaters and museums were both included in the definition of convention center facilities, thus allowing municipalities to spend HOT revenue for their construction. No cultural facilities are currently included in the definition of convention center facilities and

convention center complexes, meaning that municipalities cannot spend HOT revenue for the construction, upkeep, and maintenance of them under the first approved use in Section 351.101 (a) (1). Municipalities can use HOT revenue for cultural facilities under the fourth approved use of HOT revenue (Sec. 351.101 (a) (4)), but spending for this use is limited to a set percentage.

Sections 351.001 (5) and (6) define “tourism” and “tourist,” respectively. “Tourism” is defined as the “guidance or management of tourists,” and a “tourist” is defined as “an individual who travels from the individual’s residence to a different municipality, county, state, or country for pleasure, recreation, education, or culture.” There is no distance requirement in the definition of a tourist, so long as the visitor comes from outside the municipality that they are visiting.

¹ Texas Tax Code, Sec. 351.101 (e).

Reporting

The tax code also established a number of reporting requirements for municipalities that collect HOT. These are to assure that HOT revenue is only spent on approved uses as established by the tax code. First, the governing body of a municipality is allowed to contract a person, governmental entity, or private organization to manage and supervise programs and activities funded with HOT revenue. If the municipality does contract out the management and supervision of HOT revenue, the person or entity receiving the contract must submit for approval an annual budget to the governing body of the municipal entity. They also must report to the governing municipal body (at least quarterly) all expenditures of HOT revenue and maintain complete and accurate financial records of each expenditure of HOT revenue; these reports must be made available to the governing body of the municipality for inspection and review on request. Furthermore, HOT revenue must be kept in a separate account so that it does not commingle with any other revenue the organization receives.

Regardless of whether the municipality itself disperses HOT revenue or if it contracts with another entity to do so, the statute requires that a record must be kept that “accurately identifies the receipt and expenditures of all revenue derived”⁹ from HOT. Before making any expenditure of HOT revenue, the municipality or its delegated entity is required to provide a list with two pieces of

¹ Texas Tax Code, Sec. 351.108 (a).

information: (1) “each scheduled activity, program or event that is directly funded by the tax or has its administrative costs funded in whole or in part by the tax,” and (2) “each scheduled activity, program, or event...that is directly enhancing tourism and the convention and hotel industry.”¹⁰

While the statute does require a list of those HOT-funded activities that directly enhance tourism and the hotel and convention industry, it does not specify how this enhancement should be determined. Furthermore, the statute does not require the collection of data or records that demonstrate the effect the funded event will have (or had) on tourism, such as zip codes or hotel stays. Rather, it is left to the governing body of the municipality to determine what constitutes the promotion of tourism.

The statute also explicitly allows for HOT-funded subgrants for the arts:

Nothing in this section shall prohibit any private entity, person, or organization from making subgrants by contract to any other person, entity, or private organization for expenditures under Section 351.101(a) (4) [the approved usage of HOT funding for the support of the arts].¹¹

The subgrantee is responsible for making reports (at least annually) to the governing body of all HOT expenditure and to make those records available for review by the governing body and any other person. Therefore, municipalities or their agents are specifically allowed to subgrant HOT revenue to support the arts, so long as the projects supported meet the two-part test and the organization receiving the grant reports how the HOT revenue was spent.

Allocation

Section 351.103 of the Texas Tax Code regulates the allocation of HOT revenue among the approved uses. Although many exceptions apply, most municipalities are allowed to allocate a maximum of 15% of the total HOT revenue collected or the amount of tax collected at 1% of the cost of a hotel room, whichever is greater, to the support of the arts. Additionally, they may allocate a maximum of 15% of the total HOT revenue collected to historical preservation. Most municipalities must allocate at least 50% of the total HOT revenue collected to “advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants.”¹² Although not specifically related to the arts, any advertising done by arts organizations that goes outside of the local area could be justified under this approved use, thus allowing arts organizations to receive more than the maximum amount of HOT revenue allowed to support the arts.

Texas Tax Code, Sec. 351.108 (b) (1) and (2). Although the statute requires that the list be made before the activities are funded, it does allow the municipality or funded entity to add activities programs, or events to the list so long as they are “directly enhancing and promoting tourism and the convention industry.”

² Texas Tax Code, Sec. 351.101 (g).

Summary

Changes to the tax law since the Lalor Law was passed in 1977 have significantly restricted the ability of municipalities to spend the HOT revenue that they collect. The law now clearly states that all HOT-funded projects must fit into one of the six approved uses *and* “directly enhance and promote tourism.”¹³ However, while the law does define what a tourist is, it does not specify a distance that a person must travel to be considered a tourist. Furthermore, the law does not specify what “directly enhancing and promoting tourism” means. It does not provide any thresholds or percentages that must be met to satisfy the tourism requirement, such as the percentage of participants who come from outside the local zip codes or the number of hotel nights generated. And although the entity dispensing HOT revenue must account for the money being spent and document the funded activities that promote tourism, they are not required to report any specific data to prove that an activity or event promotes tourism. While the collection of such data is valuable, both as a justification of HOT expenses and a possible marketing tool, it is in no way required by law.

¹ See Texas Tax Code, Sec. 351.101 (a) (3).

² Texas Tax Code, Sec. 351.101 (b).

The decision as to what constitutes the direct enhancement and promotion of the tourism ultimately rests with the governing body of the municipality that collects the tax. In a November 2003 opinion, the Attorney General’s Office noted that

it is for the city’s governing body to determine in the first instance whether a proposed expenditure is among the permissible uses section 351.101 (a) lists and will “directly enhance and promote tourism and the convention and hotel industry.” A municipality could find, for example, that subsidizing a quilting exhibit or demonstration at a senior center is permissible as encouraging, promoting, improving, and applying the arts, although the municipality would also have to find that the subsidy would “directly enhance and promote tourism and the convention and hotel industry”... Whether a particular proposed expenditure of the municipal hotel occupancy tax revenue is a permissible use and will “directly enhance and promote tourism and the convention and hotel industry” is for a municipality’s governing body to

determine in the first instance.¹⁴

This opinion makes two important points. First, the governing body of a municipality has the primary authority to determine what constitutes an approved expenditure of HOT revenue in its community. Second, the opinion allows each municipality to determine what constitutes the “arts” and “tourism” in their community, concepts that will obviously vary based on population, geography, and demographics. This allows municipalities considerable leeway to determine how to best promote tourism in their own community.

Historical Changes to the HOT Legislation

Prior to 1977, the Texas Tax Code limited the spending of municipally collected hotel occupancy tax (HOT) to three areas:

- (1) “the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities, including, but not limited to, civic center convention buildings, auditoriums, coliseums,” and the parking and storage facilities related to these features;
- (2) the “furnishings of facilities, personnel and materials for the registration of convention delegates and registrants;
- (3) advertising and promotion of the city and its vicinity in order to encourage tourism and attract conventions.¹⁵

¹ Office of the Attorney General of Texas, Opinion No. GA-0124 (November 18, 2003).

² Texas Bill 298, 65th Legislature (1977).

Municipalities were not allowed to spend HOT revenue on any other facilities, projects, or programs, thus limiting the use HOT revenue to the support of the convention industry. At this point, the tax code did not consider the development of tourist destinations to be a legitimate expense for HOT revenue.¹⁶

In 1977, with the passage of House Bill 298, the 65th Texas State Legislature significantly expanded the approved uses of HOT revenue (see Appendix B). H.B. 298, authored by freshmen legislator Lance Lalor, in what a later Attorney General’s Opinion would term a “permissive expansion of the uses and limitations on the proceeds from the current tax,”¹⁷ extended the approved uses of HOT revenue to covers arts and historical preservation. The Lalor Law, as it came to be known,

attempted to increase arts funding and give cities more local control over that funding while not taking anything from the State's General Revenue Fund.¹⁸ The Lalor Law made two significant changes to the tax code. First, it extended the definition of convention center facilities to include civic theaters and museums, thus allowing HOT revenue to be spent on the construction, repair, maintenance, and operation of these facilities. Second, the Lalor Law added two new approved uses of HOT revenue to the three already existing in the tax law. Specifically, the Lalor Law allowed cities to spend HOT revenue on

¹ The legislation that established the three categories for HOT spending was Senate Bill 911 from the 62nd Texas State Legislature (1971). As originally written, S.B. 911 would have allowed cities to spend HOT revenue on bonds "in order to obtain civic centers, auditoriums, exhibition halls, libraries, and similar buildings." The inclusion of "libraries and similar buildings" indicates that the originally proposed legislation was focused on more broadly defined municipal capital development as opposed to the limited focus on the convention industry in bill that was signed into law. The exclusion of libraries and the inclusion of categories (2) and (3) above indicate that the intent of the bill shifted from funding improvements that would benefit conventioners and citizens of a city to one would benefit primarily conventioners.

² Office of the Attorney General of Texas, Opinion No. JM-690 (May 7, 1987).

³ The Lalor Law was accompanied by S.B. 333, which raised the maximum municipal HOT rate from 3% to 4%, thus allowing cities to add funding for arts and historical preservation without diminishing existing funding to the convention industry.

- (4) the encouragement, promotion, improvement, and application of the arts, including music (instrumental and vocal), dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, and exhibition of these major art forms; and
- (5) historical preservation and restoration.¹⁹

The Lalor Law clearly removed the emphasis of the HOT tax from the physical and staffing needs of the convention industry to the development of livable and vibrant cities.

Although the Lalor Law did not specifically mention tourism, an Attorney General's Opinion from 1987 noted that "the bill analysis to [the Lalor Law] reveals a legislative recognition that the promotion of the arts encourages tourism while enhancing the quality of urban life."²⁰ Thus, the Lalor Law recognizes that HOT funding for the arts, while not contributing to the convention industry in the same way as the construction of a convention center or advertising for conventions, does promote tourism through the creation of an environment that is appealing to both tourists and local residents alike. At the time of its passage, however, opponents of the bill argued that the expansions of the Lalor Law did not represent a fair use of the tax revenue, in that those who bear the brunt of the tax—conventioners and other out-of-town visitors—would not receive its benefits.²¹

Although subsequent legislative changes would further expand the uses of HOT revenue,

none of these changes would benefit the arts in the way that the Lalor Law did. In fact, most legislative changes since 1977 have significantly limited the ability of cities to spend HOT revenue on the arts. The most significant limitation, which would establish the pattern of legislative change for the next 20 years, came in 1983, when the 68th Texas State Legislature passed House Bill 1836.

¹ Texas House Bill 298, 65th Legislature (1977).

² Office of the Attorney General of Texas, Opinion No. JM-690 (May 7, 1987).

³ Texas House of Representatives, Bill Analysis of House Bill 298, 65th Legislature (1977).

The original intention of H.B. 1836 was to raise the maximum municipal HOT rate from 4% to 7%, recognizing that the existing rate was generating insufficient funds for approved projects, particularly the debt service on convention centers. The original draft of the bill did not limit how a city allocated HOT revenue, so long as it was being spent on one of the already approved uses. The original bill analysis argued that “if cities choose to spend their occupancy-tax revenues for support of the arts, historical preservation, public improvement projects, or any other authorized uses, that is their business; restricting use of this revenue further, as some have suggested, is a bad idea.”²² Those who were in favor of restricting the use of the revenue further, however, won the debate, and the new version that eventually passed placed additional restrictions on a city’s ability to spend HOT revenue.

Opponents of the original version of H.B. 1836 argued that “some cities have stretched the meaning of their hotel-tax revenue, financing activities and services that were not meant to be authorized...Cities are making their accommodations less attractive to tourists and visitors in order to finance projects that primarily benefit city residents.”²³ The version of the bill signed by the governor limited arts spending to only 1% of the maximum 7% collected. This was the first time that cities were restricted in their allocation of HOT revenue among approved expenditures. Second, H.B. 1836 limited funding for historical preservation projects to those in the immediate vicinity of convention center facilities or in an area that would be frequented by tourists or visitors.

The third, and most significant, restriction placed on HOT funding by H.B. 1836 limited the uses of funds to the direct promotion of tourism:

It is the intent of the legislature that revenues derived from the tax authorized by the act are to be expended in a manner directly enhancing tourism and the convention and hotel industry.²⁴

This was the first time that expenditures for arts and historical preservation had been specifically limited to the enhancement of tourism and the convention and hotel industry. Although the rationale behind the Lalor Law was that the broad development of the arts would benefit local citizens and also attract tourists, the logic of H.B. 1836 limits the spending of HOT money only to those activities that “directly” promote tourism and the convention and hotel industry.

During the 70th State Legislature in 1987, two more legislative changes in the tax law, both coming from the Senate, made it even more difficult for cities to spend money on the arts. Senate Bill 888 was a recodification of the existing tax law, intended to make it more accessible, understandable, and usable. However, there was one substantive change that affected HOT funding for the arts: a change in the definition of convention center facilities. In 1977, the Lalor Law extended the definition of convention center facilities in the tax code to cover civic theaters and museum, thus allowing cities to spend HOT revenue to develop and maintain these facilities. S.B. 888 removed civic theaters and museums from the definition, defining convention center facilities as “municipal buildings that are suitable for use as convention and exposition facilities.”²⁵ Although some theaters and museums could be considered “suitable for use as convention and exposition facilities,” S.B. 888 significantly limited the ability of cities to spend money on arts-related capital projects.

The other piece of legislation from the 70th Legislature, Senate Bill 1532, placed even greater restrictions on the spending of municipal HOT revenue. First, S.B. 1532 added to the tourism

¹ Texas House Bill 1836, 68th Legislature (1983).

² Texas Senate Bill 888, 70th State Legislature (888).

restrictions put in place by H.B. 1836 in 1983. The tourism restriction was rewritten to read (italics added)

Revenue derived from the tax authorized by this act is to be expended *solely* in a manner directly enhancing and *promoting* tourism and the hotel and convention industry as permitted in Subsection (a) of this section. Such revenue shall not be used for the general revenue purposes or general governmental operations of a city.²⁶

Furthermore, additional restrictions were added to the subsection that defines acceptable uses of HOT tax revenues, including the arts and historic preservation:

The revenue derived from an occupancy tax authorized or validated by this act may only be used to promote tourism and the convention and hotel industry.²⁷

These additional restrictions make explicit the relationship between tourism, the hotel and conven-

tion industry, and the occupancy tax. Specifically, cities that collect HOT revenue may only use the money to enhance and promote tourism and the hotel and convention industry. As an Attorney General's opinion from 1988 noted,

it has been suggested that [the subdivision] which provides that [it] is the intent of the legislature that the hotel tax be used to promote tourism and the convention and hotel industry, adds to the purposes for which the hotel tax may be used. We conclude, however, that [this subsection] does not add to [to the purposes for which the hotel tax may be used]. Rather, it limits [them] by providing that when money is spent for one of the purposes listed in subsection (a), it should be done so in a manner that promotes tourism and the convention and hotel industry.²⁸

Clearly, the “permissive expansion” of HOT funding options for cities enacted by the Lalor Law was significantly scaled back during the 70th State Legislature.

Following S.B. 888, in 1989 the 71st State Legislature made further changes to the definition of convention center facilities with the passage of House Bill 1110. This bill eliminated from the definition “other municipal entities” and “suitable for use as convention and exposition facilities,” leaving the definition of convention center facilities to be

¹ Texas Senate Bill 1532, 70th State Legislature (888).

² Ibid.

³ Office of the Attorney General of Texas, Opinion No. JM-965 (October 18, 1988).

civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or that are managed in whole or part by the municipality.²⁹

These changes made it all but impossible for cities to fund theaters, museums, or other cultural facilities with HOT money designated for convention centers, although cities could still fund such projects under the approved category of arts funding.

H.B. 1110 also allowed cities to contract with persons, other governmental entities, or private organizations to manage or supervise programs or activities funded with HOT revenue. This formalized the relationship between municipalities and local arts agencies, particularly regarding subgranting activities.

In response to the City of Round Rock's attempts to use HOT revenue to finance the construction of a minor league baseball stadium, categorizing the facility as a convention center, in 1999 the state legislature further limited the definition of convention center facilities with House Bill 2844. The new legislation defined convention center facilities as “facilities that are primarily used to

host conventions and meeting,”³⁰ which excludes sports stadiums, as well as theaters, museums, and other cultural facilities. However, H.B. 2844 did allow certain municipalities to spend HOT revenue on expenses “directly related to a sporting event in which the majority of participants are tourists.”

The major change to HOT legislation from the 77th State Legislature in 2001 was a further tightening of reporting requirements for HOT expenditures through House Bill 1022. Previous law required cities that collect HOT to maintain records of all of the expenditures of that revenue. However, as the bill analysis of H.B. 2961 notes, “concerns have been raised regarding the use of revenue from the hotel occupancy tax.”³¹ Because of these concerns, H.B. 1022 required that cities specifically justify all expenses of HOT revenue. The city (or its agent if a third party distributes the HOT revenue) must provide a list specifying “each activity, program, or event that is directly funded by the tax or has its administrative costs funded in whole or in part by the tax” as well as each activity, program, or event that “is directly enhancing and promoting tourism and the convention and hotel industry.”³² Although the requirements for HOT funding did not change with H.B. 1022, the reporting requirements now specifically forced cities to justify all HOT expenditures in terms of the convention and hotel industry.

¹ Texas House Bill 1110, 71st State Legislature (1989).

² Texas House Bill 2844, 76th State Legislature (1999).

³ Texas House of Representatives, Bill Analysis of House Bill 1022, 77th Legislature (2001).

The bill analysis for H.B. 1022 notes, however, that “these provisions...do not prohibit the use of local hotel occupancy tax for the encouragement, promotion, and application of the arts or for historical restoration and preservation as otherwise provided by provisions regarding the municipal hotel occupancy tax.”³³ So, while reporting requirements were strengthened, the two-part test for HOT funding remained the same.

2004 HOT Survey

In June, July, and August of 2004, the Texas Commission on the Arts (TCA) conducted a survey of local arts agencies (LAAs) concerning the use of HOT revenue for the arts. The survey consisted of 18 questions designed to determine (1) how much HOT revenue LAAs receive to support the arts, (2) how the amount HOT revenue going to LAAs compares to other kinds of government financial support, and (3) how recent changes in legislation and pressure from the Texas

Hotel and Lodging Association have affected LAAs and the programs and activities they provide or support (see Appendix C for a copy of the survey). The survey was sent by email to 50 LAAs selected by TCA staff. Those LAAs were then contacted by telephone to complete the survey. Forty-two LAAs completed the survey, and partial information for an additional two LAAs was gathered from previous TCA grant applications. A complete list of the survey results is provided in Appendix D.

¹ Texas House Bill 1022, 77th Legislature (2001).

² Texas House of Representatives, Bill Analysis of House Bill 1022, 77th Legislature (2001).

The LAAs surveyed received a total of almost \$18 million in HOT revenue in their last fiscal year. This amount represents 54.2% of their total cash income and is easily the largest source of government funding. In fact, all other government revenue combined, including TCA grants, city revenue other than HOT, county revenue, and NEA grants, accounted for only a little over \$4.5 million, meaning that the LAAs surveyed receive almost 4 times as much income from municipal HOT revenue than all other sources of government funding combined. Of the organizations surveyed, 14 (31.8%) received at least the maximum amount of HOT funding allowed for the arts.³⁴ The average organization surveyed reported receiving approximately 13.3% of the total HOT revenue collected in their municipality, although many organizations were not able to report a precise figure.

The activities that receive complete or partial funding from HOT revenue, as reported by the survey participants, are subgranting (54.8%),³⁵ presentation of performances (38.1%), advertising (35.7%), and general operations (33.3%). Information on what activities are supported by the HOT-funded subgrants was not collected. However, the activities most commonly funded with HOT revenue are easily justifiable under Chapter 351 of the Texas Tax Code. Subgranting is specifically allowed under Subsection 351.101 (g), provided that proper records are kept by the subgrantee. Likewise, general operations can be funded with HOT revenue, as authorized by Subsection 351.101 (e), which states that

hotel occupancy tax revenue may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs only if those administrative costs are incurred directly in the promotion and servicing expenditures authorized under Section 351.101(a). If a municipal or other public or private entity

that conducts an activity authorized under this section conducts other activities that are not authorized under this section, the portion of the hotel administrative costs of the entity for which hotel occupancy tax revenue may be used may not exceed the portion of those administrative costs actually incurred in conducting the authorized activities.

Section 351.101(a) (3) specifically allows HOT expenditures for “advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity.” So long as advertising can legitimately be expected to attract tourists, it can be funded with HOT revenue. The presentation of performances clearly fits into the approved use of Section 351.101(a) (4), which allows for the encouragement of the arts, and most public performances, if properly marketed, likely promote tourism.

Despite losses in the tourism industry since 2001, 47.7% of the survey respondents reported no significant drop in HOT revenue during that time period. In fact, 25.0% reported significant increases. However, the 27.3% of the respondents who reported significant decreases suffered very large losses so that overall, HOT revenue appears to be down (approximately 9.6%) among the survey respondents since 2001, although the accuracy of these data has not been confirmed with state-wide HOT revenue figures. Of the organizations that reported significant decreases in HOT revenue since 2001, only 36.4% reported finding new revenue sources to replace the lost funding.

Of the LAAs surveyed, 39.0% report some kind of tourism data³⁶ to the governing body of their municipality to receive HOT revenue. However, many of the LAAs surveyed are agencies or

¹ Most cities are limited to spending no more than 15% of the total amount of HOT revenue collected or the amount of tax received at the rate of 1% of the cost of a hotel room, whichever is larger, on the arts. However, some LAAs receive more than the maximum allowed for the arts because they also receive HOT funding for approved uses such as advertising, historic preservation, or the management of a convention center.

² The numbers in parentheses represent the percentage of survey respondents who reported funding all or some of the activities with HOT revenue; they do not represent the percentage of total funding for the activity that comes from HOT revenue.

departments within city government and thus receive their HOT revenue as part of the regular municipal budgeting process. Of the organizations that produce events, manage or own a center, or provide classes or workshops, 63.4% make some effort to collect tourism data, although the scope of those efforts varies greatly. Most organizations that do not collect tourism data indicated lack of funds or expertise as the primary reason. Of the 23 LAAs that provide subgrants financed at least

partially with HOT revenue, 65.2% require the subgrantees to provide tourism data, whether during the application or review process. Note, however, that a lack of collection of tourism data does not mean a lack of compliance with state tax law. The law states that a municipality or entity that distributes HOT revenue must compile a list of events and activities that are “directly enhancing and promoting tourism and the convention and hotel industry,”³⁷ but it does not state that the list must contain data on audience, zip codes, or hotel nights. Rather, the attorney general has indicated that the determination of whether or not an event or activity promotes tourism is, in the first instance, the responsibility of the municipality distributing the HOT funds.³⁸

Thirty-three percent of the LAAs surveyed reported that the application process for receiving HOT funding has been significantly tightened to include tourism requirements in the last four years, although the nature of these changes varies. Many organizations must now provide tourism data for their programs or services when requesting HOT revenue (or require their subgrant applicants to do so), while others have to address tourism in their application but do not have to provide specific data in relation to tourism. Additionally, 14.6% of the LAAs reported that they have lost funding for or added, dropped, or changed programs in response to HOT funding requirements in the last four years, although no LAA reported significantly changing their core activities in response to HOT funding requirements. Instead, most of the organizations reporting changes have found new ways to fund programs that have lost HOT support.

attendance figures are not, since they only indicate the total number of people who attended or visited an event, program, or facility and not where they traveled from.

¹ Texas Tax Code, Sec. 351.101 (b).

² Office of the Attorney General of Texas, Opinion No. GA-0124 (November 18, 2003).

Given that marketing efforts can be an easy indication of an event or program’s ability to attract tourists, the survey attempted to gauge what kind of marketing efforts LAAs were involved in. The LAAs surveyed reported spending an average of \$28,528 on marketing in their last fiscal year, which accounted for 3.7% of their budget.³⁹ Additionally, 66.7% of the respondents advertise outside of their local area, although the survey gave no definition of “local area,” meaning that respondents interpreted the term based on their own circumstances.

The survey was also interested in cooperative relationships that LAAs establish in order to make marketing more effective and less expensive. The survey found that 78.6% of the respondents

have established some kind of cooperative marketing relationship, whether that be with other arts organizations, convention and visitor's bureaus, chambers of commerce, or private businesses, including retail, restaurants, and hotels. Specifically, 47.6% of the respondents report having some kind of sustained relationship with hotels in their area in an effort to attract visitors. These relationships ranged from LAA and hotel industry representatives sitting on boards together, to cooperative advertising with hotels, to dedicated blocks of hotel rooms for artists or audience members. Many organizations reported that they were interested in establishing relationships with hotels in their area or had even tried to establish such relationships. However, many also indicated that local hotel management had expressed little to no interest in forming such relationships.

¹ The numbers for marketing expenses should be treated as a very rough estimate. Few LAAs track marketing as an individual category in their budget and thus had to estimate values based on printing costs, staff time, advertisements purchased, etc.

Conclusion

This review of HOT revenue and the arts presents an incomplete picture of government funding for the arts in Texas. Currently, there are approximately 125 local arts agencies and many other organizations that receive HOT revenue (either directly from a municipal government or from subgranting agencies) for arts activities operating in the state. These organizations vary widely in the amount of HOT revenue they receive and their reliance on that revenue to continue their operations. This review does, however, lead to a number of conclusions about the state of HOT funding for the arts in 2004.

First, HOT revenue is clearly the largest source of government funding for the arts in the state. Should this revenue base deteriorate, it will have a serious and detrimental effect on the arts in Texas. Second, changes to the tax code since 1977 have made it increasingly difficult for municipalities to allocate HOT revenue as they see fit. Under the Lalor Law, cities were able to promote tourism in ways that were consistent with local culture and character, allowing each city to craft a tourism plan that was suited to its own circumstances. Currently, however, cities have much less discretion to allocate the tax revenue that they collect. Third, most LAAs that receive HOT revenue are spending it in ways that are consistent with the state tax law. The tax code requires that HOT revenue be spent in ways that enhance and promote the tourism and hotel and convention industry. The activities most commonly funded by HOT revenue—subgranting, presenting, marketing, and general operations—could all easily fall within the tourism parameter. Finally, analysis of the tax code and Attorney General's opinions reveal two things: municipalities or LAAs are not required to collect tourism data to justify HOT expenses (although this is still valuable information for arts organizations to have), and the decision about what enhances and promotes tourism and the hotel and convention industry is, in the first place, a local decision.

Appendix A

(Sections of the tax code most relevant to HOT funding for the arts are in bold.)

TAX CODE

SUBTITLE D. LOCAL HOTEL OCCUPANCY TAXES

CHAPTER 351. MUNICIPAL HOTEL OCCUPANCY TAXES

SUBCHAPTER A. IMPOSITION AND COLLECTION OF TAX

Sec. 351.001. DEFINITIONS. In this chapter:

(1) “Municipality” includes any incorporated city, town, or village.

(2) “Convention center facilities” or “convention center complex” means facilities that are primarily used to host conventions and meetings. The term means civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or that are managed in whole or part by the municipality. In a municipality with a population of 1.5 million or more, “convention center facilities” or “convention center complex” means civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or that are managed in part by the municipality, hotels owned by the municipality or a nonprofit municipally sponsored local government corporation created under Chapter 431, Transportation Code, within 1,000 feet of a convention center owned by the municipality, or a historic hotel owned by the municipality or a nonprofit municipally sponsored local government corporation created under Chapter 431, Transportation Code, within one mile of a convention center owned by the municipality. The term includes parking areas or facilities that are for the parking or storage of conveyances and that are located at or in the vicinity of other convention center facilities. The term also includes a hotel owned by or located on land that is owned by an eligible central municipality or by a nonprofit corporation acting on behalf of an eligible central municipality and that is located within 1,000 feet of a convention center facility owned by the municipality.

(3) “Eligible coastal municipality” means a home-rule municipality that borders on the Gulf of Mexico and has a population of less than 80,000.

(4) “Hotel” has the meaning assigned by Section 156.001.

(5) **“Tourism” means the guidance or management of tourists.**

(6) **“Tourist” means an individual who travels from the individual’s residence to a different municipality, county, state, or country for pleasure, recreation, education, or culture.**

(7) “Eligible central municipality” means a municipality with a population of more than 440,000 but less than 1.5 million that is located in a county with a population of one million or more and that has adopted a capital improvement plan for the expansion of an existing convention center facility.

(8) “Visitor information center” or “tourism information center” means a building or a portion of a building used to distribute or disseminate information to tourists.

(9) “Revenue” includes any interest derived from the revenue.

(10) “Revenue” includes any interest derived from the revenue.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1110, Sec. 1, eff. Oct. 1, 1989; Acts 1993, 73rd Leg., ch. 231, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 620, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 680, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(51), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 454, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.273, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 495, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1999; Acts 1999,

76th Leg., ch. 1467, Sec. 2.71, eff. Oct. 1, 1999; Acts 2001, 77th Leg., ch. 1308, Sec. 1, eff. June 16, 2001.

Sec. 351.002. TAX AUTHORIZED. (a) A municipality by ordinance may impose a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs \$2 or more each day, and is ordinarily used for sleeping.

(b) The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person except for those services related to cleaning and readying the room for use or possession.

(c) The tax does not apply to a person who is a permanent resident under Section 156.101 of this code.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 328, Sec. 5, eff. Aug. 26, 1991.

Sec. 351.0025. EXTRATERRITORIAL JURISDICTION. (a) A municipality with a population of less than 35,000 by ordinance may impose the tax authorized under Section 351.002 in the municipality's extraterritorial jurisdiction.

(b) The municipality may not impose a tax under this section if as a result of the adoption the combined rate of state, county, and municipal hotel occupancy taxes in the extraterritorial jurisdiction exceeds 15 percent of the price paid for a room in a hotel.

Added by Acts 1991, 72nd Leg., ch. 328, Sec. 3, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 680, Sec. 2, eff. Sept. 1, 1993.

Sec. 351.003. TAX RATES. (a) Except as provided by this section, the tax authorized by this chapter may be imposed at any rate not to exceed seven percent of the price paid for a room in a hotel.

(b) The rate in an eligible central municipality may not exceed nine percent of the price paid for a room. This subsection does not apply to a municipality to which Section 351.106 applies.

(c) The rate in a municipality that borders on the Gulf of Mexico and has a population of more than 250,000 or in a municipality with a population of less than 5,000 adjacent to a home-rule city with a population of less than 80,000 may not exceed nine percent of the price paid for a room.

Text of subsec. (d) effective until January 1, 2006

(d) A general-law municipality that borders on the Gulf of Mexico and has a boundary that is within 30 miles of Mexico may by ordinance increase the rate of the tax under Subsection (a) to a maximum rate of 7.5 percent if the increase is approved by a majority of the registered voters of the municipality voting at an election held for that purpose.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.23(a), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 620, Sec. 2, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 825, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1308, Sec. 2, eff. June 16, 2001; Acts 2003, 78th Leg., ch. 247, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 382, Sec. 1, 3, eff. June 18, 2003.

Sec. 351.004. TAX COLLECTION. (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 the tax when due to collect the tax not paid or to enjoin the person from operating a hotel in the municipality until the tax is paid or the report filed, as applicable, as provided by the court's order. In addition to the amount of any tax owed under this chapter, the person is liable to the municipality for the municipality's reasonable attorney's fees and a penalty equal to 15 percent of the total amount of the tax owed.

(b) Section 16.061, Civil Practice and Remedies Code, applies to the collection of a tax under

this chapter. A limitation period provided by Title 2 relating to the time allowed to assess taxes and bring a suit to collect taxes does not apply to a tax imposed under this chapter or to a suit brought under this section.

(c) A municipality by ordinance may authorize misdemeanor punishment for a violation of an ordinance adopted under this chapter.

(d) The remedies provided by this section are in addition to other available remedies.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1110, Sec. 2, eff. Oct. 1, 1989; Acts 1993, 73rd Leg., ch. 259, Sec. 1.

Sec. 351.0041. COLLECTION PROCEDURES ON PURCHASE OF HOTEL. (a) If a person who is liable for the payment of a tax under this chapter is the owner of a hotel and sells the hotel, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the amount due until the seller provides a receipt by a person designated by the municipality to provide the receipt showing that the amount has been paid or a certificate showing that no tax is due.

(b) The purchaser of a hotel who fails to withhold an amount of the purchase price as required by this section is liable for the amount required to be withheld to the extent of the value of the purchase price.

(c) The purchaser of a hotel may request that the person designated by the municipality to provide a receipt under Subsection (a) issue a certificate stating that no tax is due or issue a statement of the amount required to be paid before a certificate may be issued. The person designated by the municipality shall issue the certificate or statement not later than the 60th day after the date that the person receives the request.

(d) If the person designated by the municipality to provide a receipt under Subsection (a) fails to issue the certificate or statement within the period provided by Subsection (c), the purchaser is released from the obligation to withhold the purchase price or pay the amount due.

Added by Acts 1991, 72nd Leg., ch. 328, Sec. 1, eff. Aug. 26, 1991.

Sec. 351.005. REIMBURSEMENT FOR TAX COLLECTION EXPENSES. (a) A municipality may permit a person who is required to collect and pay over to the municipality the tax authorized by this chapter not more than one percent of the amount collected and required to be reported as reimbursement to the person for the costs in collecting the tax.

(b) The municipality may provide that the reimbursement provided by this section be forfeited because of a failure to pay the tax or to file a report as required by the municipality.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.006. EXEMPTION. (a) A United States governmental entity described in Section 156.103(a) is exempt from the payment of tax authorized by this chapter.

(b) A state governmental entity described in Section 156.103(b) shall pay the tax imposed by this chapter but is entitled to a refund of the tax paid.

(c) A person who is described by Section 156.103(d) is exempt from the payment of the tax authorized by this chapter.

(d) A person who is described by Section 156.103(c) shall pay the tax imposed by this chapter but the state governmental entity with whom the person is associated is entitled to a refund of the tax paid.

(e) To receive a refund of tax paid under this chapter, the governmental entity entitled to the refund must file a refund claim on a form provided by the municipality and containing the information required by the municipality. The comptroller by rule shall prescribe the form that must be used and the information that must be provided.

(f) A governmental entity may file a refund claim with the municipality under this chapter only for each calendar quarter for all reimbursements accrued during that quarter. The municipality may

adopt an ordinance to enforce this section.

(g) The right to use or possess a room in a hotel is exempt from taxation under this chapter if the person required to collect the tax receives, in good faith from a guest, an exemption certificate stating qualification for an exemption provided in Subsection (c). The exemption must be supported by the documentation required under rules adopted by the comptroller and the municipality.

Added by Acts 1989, 71st Leg., ch. 504, Sec. 2, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 454, Sec. 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1467, Sec. 2.72, eff. Oct. 1, 1999; Acts 2003, 78th Leg., ch. 209, Sec. 87, eff. Oct. 1, 2003.

Sec. 351.007. **PREEXISTING CONTRACTS.** If a municipality increases the rate of the tax authorized by this chapter, the increased tax rate does not apply to the tax imposed on the use or possession of a room under a contract executed before October 1, 1989, that provides for the payment of the tax at the rate in effect when the contract was executed, unless the contract is subject to change or modification by reason of the tax rate increase. The tax rate applicable to the use or possession of a room under the contract is the rate in effect when the contract was executed.

Added by Acts 1989, 71st Leg., ch. 1110, Sec. 3, eff. Oct. 1, 1989.

SUBCHAPTER B. USE AND ALLOCATION OF REVENUE

Sec. 351.101. **USE OF TAX REVENUE.** (a) **Revenue from the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following:**

(1) 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;

(2) the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;

(3) **advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;**

(4) **the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms;**

(5) **historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:**

(A) **at or in the immediate vicinity of convention center facilities or visitor information centers; or**

(B) **located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates; and**

(6) for a municipality located in a county with a population of 290,000 or less, expenses, including promotion expenses, directly related to a sporting event in which the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity.

(b) **Revenue derived from the tax authorized by this chapter shall be expended in a manner directly enhancing and promoting tourism and the convention and hotel industry as permitted by Subsection (a). That revenue may not be used for the general revenue purposes or general governmental operations of a municipality.**

(c) **The governing body of a municipality by contract may delegate to a person, including**

another governmental entity or a private organization, the management or supervision of programs and activities funded with revenue from the tax authorized by this chapter. The governing body in writing shall approve in advance the annual budget of the person to which it delegates those functions and shall require the person to make periodic reports to the governing body at least quarterly listing the expenditures made by the person with revenue from the tax authorized by this chapter. The person must maintain revenue provided from the tax authorized by this chapter in a separate account established for that purpose and may not commingle that revenue with any other money. The municipality may not delegate to any person the management or supervision of its convention and visitors programs and activities funded with revenue from the tax authorized by this chapter other than by contract as provided by this subsection. The approval by the governing body of the municipality of the annual budget of the person to whom the governing body delegates those functions creates a fiduciary duty in the person with respect to the revenue provided by the tax authorized by this chapter.

(d) A person with whom a municipality contracts under this section to conduct an activity authorized by this section shall maintain complete and accurate financial records of each expenditure of hotel occupancy tax revenue made by the person and, on request of the governing body of the municipality or other person, shall make the records available for inspection and review to the governing body or other person.

(e) Hotel occupancy tax revenue spent for a purpose authorized by this section may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs only if those administrative costs are incurred directly in the promotion and servicing expenditures authorized under Section 351.101(a). If a municipal or other public or private entity that conducts an activity authorized under this section conducts other activities that are not authorized under this section, the portion of the total administrative costs of the entity for which hotel occupancy tax revenue may be used may not exceed the portion of those administrative costs actually incurred in conducting the authorized activities.

(f) Municipal hotel occupancy tax revenue may not be spent for travel for a person to attend an event or conduct an activity the primary purpose of which is not directly related to the promotion of tourism and the convention and hotel industry or the performance of the person's job in an efficient and professional manner.

(g) Nothing in this section shall prohibit any private entity, person, or organization from making subgrants by contract to any other person, entity, or private organization for expenditures under Section 351.101(a)(4). A subgrantee shall:

(1) at least annually make periodic reports to the governing body of its expenditures from the tax authorized by this chapter; and

(2) make records of these expenditures available for review to the governing body or other person.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.24(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1110, Sec. 4, eff. Oct. 1, 1989; Acts 1993, 73rd Leg., ch. 680, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1027, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 755, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1308, Sec. 3, eff. June 16, 2001; Acts 2003, 78th Leg., ch. 209, Sec. 90, eff. Oct. 1, 2003; Acts 2003, 78th Leg., ch. 303, Sec. 1, eff. June 18, 2003.

Sec. 351.102. PLEDGE FOR BONDS. (a) Subject to the limitations provided by this subchapter, a municipality may pledge the revenue derived from the tax imposed under this chapter for the payment of bonds that are issued under Section 1504.002(a), Government Code, for one or more of the purposes provided by Section 351.101 or, in the case of a municipality of 1,500,000 or more, for the

payment of principal of or interest on bonds or other obligations of a municipally sponsored local government corporation created under Chapter 431, Transportation Code, that were issued to pay the cost of the acquisition and construction of a convention center hotel or the cost of acquisition, remodeling, or rehabilitation of a historic hotel structure; provided, however, such pledge may only be that portion of the tax collected at such hotel.

(b) An eligible central municipality may pledge the revenue derived from the tax imposed under this chapter from a hotel project that is owned by or located on land owned by the municipality or by a nonprofit corporation acting on behalf of an eligible central municipality and that is located within 1,000 feet of a convention center facility owned by the municipality for the payment of bonds or other obligations issued or incurred to acquire, lease, construct, and equip the hotel and any facilities ancillary to the hotel, including shops and parking facilities. For bonds or other obligations issued under this subsection, an eligible central municipality may only pledge revenue or other assets of the hotel project benefiting from those bonds or other obligations.

(c) A municipality to which Subsection (b) applies is entitled to receive all funds that an owner of a project may receive under Section 151.429(h).

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 231, Sec. 3, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 30.274, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1004, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1308, Sec. 4, eff. June 16, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.365, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 209, Sec. 91, eff. Oct. 1, 2003.

Sec. 351.103. ALLOCATION OF REVENUE: GENERAL RULE. (a) At least 50 percent of the hotel occupancy tax revenue collected by a municipality with a population of 200,000 or greater must be allocated for the purposes provided by Section 351.101(a)(3). For municipalities with a population of less than 200,000, allocations for the purposes provided by Section 351.101(a)(3) are as follows:

(1) if the tax rate in a municipality is not more than three percent of the cost paid for a room, not less than the amount of revenue received by the municipality from the tax at a rate of one-half of one percent of the cost of the room; or

(2) if the tax in a municipality exceeds three percent of the cost of a room, 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. This subsection does not apply to a municipality, regardless of population, that before October 1, 1989, adopted an ordinance providing for the allocation of an amount in excess of 50 percent of the hotel occupancy tax revenue collected by the municipality for one or more specific purposes provided by Section 351.101(a)(1) until the ordinance is repealed or expires or until the revenue is no longer used for those specific purposes in an amount in excess of 50 percent of the tax revenue.

(b) Subsection (a) does not apply to a municipality in a fiscal year of the municipality 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. A municipality excepted from the application of Subsection (a) by this subsection shall allocate hotel occupancy tax revenue by ordinance, consistent with the other limitations of this section. The portion of the tax revenue allocated by a municipality with a population of more than 1.6 million for the purposes provided by Section 351.101(a)(3) may not be less than 23 percent, except that the allocation is subject to and may not impair the authority of the municipality to:

(1) pledge all or any portion of that tax revenue to the payment of bonds as provided by Section 351.102(a) or bonds issued to refund bonds secured by that pledge; or

(2) spend all or any portion of that tax revenue for the payment of operation and maintenance expenses of convention center facilities.

(c) **Not more than 15 percent of the hotel occupancy tax revenue collected by a municipality, other than a municipality having a population of more than 1.6 million, or the amount of tax received by the municipality at the rate of one percent of the cost of a room, whichever is greater, may be used for the purposes provided by Section 351.101(a)(4). Not more than 19.30 percent of the hotel occupancy tax revenue collected by a municipality having a population of more than 1.6 million, or the amount of tax received by the municipality at the rate of one percent of the cost of a room, whichever is greater, may be used for the purposes provided by Section 351.101(a)(4). Not more than 15 percent of the hotel occupancy tax revenue collected by a municipality having a population of more than 125,000 may be used for the purposes provided by Section 351.101(a)(5).**

(d) A municipality that does not allocate any hotel occupancy tax revenue for the purposes provided by Section 351.101(a)(1) may allocate not more than 50 percent of the hotel occupancy tax revenue collected by the municipality for the purposes provided by Section 351.101(a)(5). **A municipality that before October 1, 1989, adopts an ordinance providing for the allocation of an amount in excess of 50 percent of the hotel occupancy tax revenue collected by the municipality for one or more specific purposes provided by Section 351.101(a)(5) may allocate the 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.**

(e) A municipality may use hotel occupancy tax revenue collected by the municipality for a purpose provided by Section 351.101(a)(1) only if the municipality complies with the applicable provisions of this section.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.24(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1110, Sec. 6, eff. Oct. 1, 1989; Acts 1993, 73rd Leg., ch. 153, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 680, Sec. 5, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1308, Sec. 5, eff. June 16, 2001.

Sec. 351.1035. ALLOCATION OF REVENUE: CERTAIN MUNICIPALITIES IN BORDER COUNTIES. (a) This section applies only to a municipality that is the largest municipality in a county described by Section 352.002(a)(14).

(b) At least 50 percent of the hotel occupancy tax revenue collected by a municipality described by Subsection (a) must be allocated for the purposes provided by Section 351.101(a)(3).

(c) **Not more than 15 percent of the hotel occupancy tax revenue collected by a municipality described by Subsection (a) may be used for the purposes provided by Section 351.101(a)(4).**

(d) **Not more than 15 percent of the hotel occupancy tax revenue collected by a municipality described by Subsection (a) may be used for the purposes provided by Section 351.101(a)(5).**

Added by Acts 2003, 78th Leg., ch. 303, Sec. 2, eff. June 18, 2003.

Sec. 351.104. ALLOCATION OF REVENUE: CERTAIN MUNICIPALITIES BORDERING BAYS. (a) This section applies only to a home-rule municipality that borders a bay, that has a population of less than 80,000, and that is not an eligible coastal municipality.

(b) In this section:

(1) "Adjacent public land" means land that:

(A) is owned by this state or a local governmental entity; and

(B) is located adjacent to a bay that is bordered by a municipality to which this

section applies.

(2) "Clean and maintain" means the collection and removal of litter and debris and the supervision and elimination of sanitary and safety conditions that would pose a threat to personal health or safety if not removed or otherwise corrected.

(c) Notwithstanding any other provision of this chapter and subject to Subsections (d) and (e), a municipality to which this section applies may use not more than 10 percent of the revenue derived

from the tax imposed under this chapter:

- (1) for a purpose described by Section 351.105(a)(1) or (2);
- (2) to clean and maintain adjacent public land; or
- (3) to mitigate coastal erosion on adjacent public land.

(d) A municipality to which this section applies may not reduce the amount of revenue that it uses for a purpose described by Section 351.101(a)(3) to an amount that is less than the average amount of revenue used by the municipality for that purpose during the 36-month period that precedes the municipality's use of revenue under Subsection (c).

(e) A municipality that uses revenue from the tax imposed under this chapter for a purpose provided by this section must spend the same amount of revenue for the same purpose from a source other than that tax.

Acts 2003, 78th Leg., ch. 699, Sec. 1, eff. Sept. 1, 2003.

Sec. 351.105. ALLOCATION OF REVENUE: ELIGIBLE COASTAL MUNICIPALITIES.

(a) An eligible coastal municipality that levies and collects an occupancy tax authorized by this chapter at a rate of seven percent shall pledge a portion of the revenue equal to at least one percent of the cost of a room to either or both of the following purposes:

(1) the payment of the bonds that the municipality or a park board of trustees may issue under Section 1504.002(a), Government Code, or under Chapter 306, Local Government Code, in order to provide all or part of the funds for the establishment, acquisition, purchase, construction, improvement, enlargement, equipment, or repair of public improvements, including parks, civic centers, civic center buildings, auditoriums, exhibition halls, coliseums, marinas, cruise ship terminal facilities, hotels, motels, parking facilities, golf courses, trolley or trolley transportation systems, and other facilities as may be considered advisable in connection with these facilities that serve the purpose of attracting visitors and tourists to the municipality; or

(2) the maintenance, improvement, or operation of the parks, civic centers, civic center buildings, auditoriums, exhibition halls, coliseums, marinas, cruise ship terminal facilities, hotels, motels, parking facilities, golf courses, trolley or trolley transportation systems, and other facilities as may be considered advisable in connection with these facilities that serve the purpose of attracting visitors and tourists to the municipality.

(b) If the tax authorized by this chapter is imposed by an eligible coastal municipality at a rate of four or more percent of the cost of a room, no lesser amount than the amount of revenue derived from the application of the tax at a rate of three percent of the cost of a room shall be used for the purpose provided by Section 351.101(a)(3).

(c) If the tax authorized by this chapter is imposed by an eligible coastal municipality at a rate of five or more percent of the cost of a room, no lesser amount than the amount of revenue derived from the application of the tax at a rate of one percent shall be used for beach patrol, lifeguard services, marine water safety, and park law enforcement.

(d) If the tax authorized by this chapter is imposed by an eligible coastal municipality at a rate of six or more percent, no lesser amount than the amount of revenue derived from the application of the tax at a rate of one percent of the cost of a room shall be used as matching funds for state funds available to clean and maintain public beaches and for other public beach-cleaning funds.

(e) Money received under Section 156.2511 and used to clean and maintain beaches is included in determining whether the municipality has met the funding obligation prescribed by Subsections (c) and (d), and the municipality may credit that money against the funding requirements prescribed by Subsections (c) and (d).

(f) An eligible coastal municipality and a park board of trustees created by the municipality may:

(1) contract for the park board to use the tax authorized by this chapter as provided by this section; and

(2) without further authorization, use the tax authorized by this chapter as provided by this section, including for the purpose of issuing bonds or entering into other agreements.

(g) The following statutes prevail over any conflicting provision in the charter of an eligible coastal municipality:

(1) this section;

(2) Chapter 306, Local Government Code; and

(3) Subchapter A, Chapter 1504, Government Code.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 680, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 15.02, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 454, Sec. 7, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 298, Sec. 1, eff. May 29, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.367, eff. Sept. 1, 2001.

Sec. 351.1055. ALLOCATION OF REVENUE: CERTAIN MUNICIPALITIES. (a) In this section:

(1) "Clean and maintain" has the meaning assigned by Section 61.063, Natural Resources Code.

(2) "Public beach" has the meaning assigned by Section 61.001, Natural Resources Code.

(3) "Beach security" means beach patrol, lifeguard services, marine water safety, and park law enforcement.

(b) Notwithstanding any other provision of this chapter, a home-rule municipality that borders on the Gulf of Mexico and has a population of more than 250,000 may use all or any portion of the revenue derived from the municipal hotel occupancy tax from hotels in an area previously subject to a county hotel occupancy tax and located on an island bordering the Gulf of Mexico to clean and maintain public beaches in the municipality.

(c) Notwithstanding any other provision of this chapter, a municipality that has a population of less than 5,000 adjacent to a home-rule city with a population of less than 80,000 may use all or any portion of the revenue heretofore or hereafter derived from the municipal hotel tax:

(1) to clean and maintain the beaches in the municipality;

(2) to provide beach security within the municipality;

(3) for any of the purposes permitted or allowed by Section 1504.001, Government Code;

(4) for any purpose allowed by Section 351.105; or

(5) to pay the principal of or interest on bonds or notes issued for any of these purposes.

Added by Acts 1999, 76th Leg., ch. 1359, Sec. 3, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 117, Sec. 1, eff. July 1, 2003; Acts 2003, 78th Leg., ch. 247, Sec. 1, eff. Sept. 1, 2003.

Sec. 351.106. ALLOCATION OF REVENUE: POPULOUS MUNICIPALITIES WITH COUNCIL-MANAGER GOVERNMENT. (a) A municipality that has a population of 1.18 million or more and that has adopted a council-manager form of government shall use the amount of revenue from the tax that is derived from the application of the tax at a rate of more than four percent of the cost of a room as follows:

(1) no more than 55 percent to:

(A) constructing, improving, enlarging, equipping, and repairing the municipality's convention center complex; or

(B) pledging payment of revenue bonds and revenue refunding bonds issued under Subchapter A, Chapter 1504, Government Code, for the municipality's convention center com-

plex; and

(2) at least 45 percent for the purposes provided by Section 351.101(a)(3).

(b) Revenue received by a municipality described by Subsection (a) from the application of the tax at a rate of four percent or less may be used as provided by Section 351.101.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.23(b), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 597, Sec. 108, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 123, 124, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.368, eff. Sept. 1, 2001.

Sec. 351.1065. ALLOCATION OF REVENUE: ELIGIBLE CENTRAL MUNICIPALITY.

(a) An eligible central municipality shall use the amount of revenue from the tax that is derived from the application of the tax at a rate of more than seven percent of the cost of a room only for:

(1) the construction of an expansion of an existing convention center facility; and

(2) pledging payment of revenue bonds and revenue refunding bonds issued under Subchapter A, Chapter 1504, Government Code, for the construction of the expansion.

(b) Any interest income derived from the application of the tax at a rate of more than seven percent of the cost of a room may be used only for the purposes provided by this section.

(c) An eligible central municipality expending tax revenue under this section shall attempt to include minority-owned businesses in the issuance of at least 32 percent of the total dollar value of the bonds issued, and in at least 32 percent of the total fees paid by the issuer, in connection with the construction.

Added by Acts 1993, 73rd Leg., ch. 620, Sec. 3, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.369, eff. Sept. 1, 2001.

Sec. 351.107. ALLOCATION OF REVENUE; CERTAIN LARGE COASTAL MUNICIPALITIES. (a) This section applies only to a municipality that borders on the Gulf of Mexico and has a population of more than 250,000.

(b) A municipality to which this section applies shall separately account for all revenue derived from the application of the tax imposed by this chapter at a rate of more than seven percent of the cost of a room.

(c) Subject to Subsection (e), revenue described by Subsection (b) may be used only for:

(1) acquiring land for a municipally owned convention center;

(2) constructing, improving, enlarging, equipping, repairing, operating, and maintaining a municipally owned convention center; and

(3) paying bonds used to finance activities described by Subdivision (1) or (2).

(d) For the purpose of the allocation of revenue under Section 351.103, revenue described by Subsection (b) is not counted.

(e) Notwithstanding any other provision of this chapter, a municipality to which this section applies may use all or any portion of the revenue derived from the municipal hotel occupancy tax from hotels in an area previously subject to a county hotel occupancy tax and located on an island bordering the Gulf of Mexico to clean and maintain public beaches in the municipality.

(f) In this section:

(1) "Clean and maintain" has the meaning assigned by Section 61.063, Natural Resources Code.

(2) "Public beach" has the meaning assigned by Section 61.001, Natural Resources Code.

Added by Acts 1999, 76th Leg., ch. 825, Sec. 2, eff. June 18, 1999. Amended by Acts 2003, 78th Leg., ch. 117, Sec. 2, eff. July 1, 2003.

Sec. 351.1075. ALLOCATION OF REVENUE: CERTAIN GENERAL-LAW COASTAL

MUNICIPALITIES.

Text of section effective until January 1, 2006

(a) A general-law municipality that borders on the Gulf of Mexico and has a boundary that is within 30 miles of Mexico may use revenue derived from a rate increase under Section 351.003(d), including any interest earned on that revenue, only for beautifying, and improving the access to and safety of, the portion of State Highway 100 known as Padre Boulevard.

(b) The amount of revenue that a municipality uses for a purpose described by Subsection (a) may not exceed the amount the municipality spends for the same purpose from a source other than a tax imposed under this chapter.

Added by Acts 2003, 78th Leg., ch. 382, Sec. 2, eff. June 18, 2003.

Sec. 351.108. RECORDS. (a) A municipality shall maintain a record that accurately identifies the receipt and expenditure of all revenue derived from the tax imposed under this chapter.

(b) A municipality or entity that spends revenue derived from the tax imposed under this chapter shall, before making an expenditure, specify in a list each scheduled activity, program, or event that:

(1) is directly funded by the tax or has its administrative costs funded in whole or in part by the tax; and

(2) is directly enhancing and promoting tourism and the convention and hotel industry.

(c) If a municipality delegates to another entity the management or supervision of an activity or event funded by the tax imposed under this chapter, each entity that is ultimately funded by the tax shall, before making an expenditure, specify in a list each scheduled activity, program, or event that:

(1) is directly funded by the tax or has its administrative costs funded in whole or in part by the tax; and

(2) is directly enhancing and promoting tourism and the convention and hotel industry.

(d) The list required in Subsections (b) and (c) should be provided to the office of the city secretary or to the city secretary's designee.

(e) Subsections (b) and (c) do not prevent a municipality or funded entity from subsequently adding an activity, program, or event to the list required by those subsections if the activity, program, or event is directly enhancing and promoting tourism and the convention and hotel industry.

(f) This section does not prevent a municipality or entity receiving revenue from the tax imposed under this chapter from setting aside tax revenue in a designated reserve fund for use in supporting planned activities, future events, and facility improvements that are directly enhancing and promoting tourism and the convention and hotel industry.

(g) Subsections (b) and (c) do not apply if the funded entity already provides written information to the municipality that indicates which scheduled activities, programs, or events offered by the entity are directly enhancing and promoting tourism and the convention and hotel industry.

(h) Subsections (b) and (c) do not affect the level of local hotel occupancy tax funding that was approved at an election held pursuant to the initiative and referendum provisions of a city charter, and do not prohibit the use of local hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts or for historical restoration and preservation as otherwise provided by this chapter.

Added by Acts 1999, 76th Leg., ch. 495, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1467, Sec. 2.73, eff. Oct. 1, 1999. Renumbered from Sec. 351.107 and amended by Acts 2001, 77th Leg., ch. 636, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(101), eff. Sept. 1, 2001.

Appendix B

H.B. 298 (The Lalor Law)
As Finally Passed and
Sent to the Governor

AN ACT

Relating to the uses to which local hotel occupancy taxes may be put; amending Subsection (a), Section 3c, Chapter 63, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1269j-4.1, Vernon's Texas Civil Statutes).

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

Section 1. Subsection (a), Section 3c, Chapter 63, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1269j-4.1, Vernon's Texas Civil Statutes), is amended to read as follows:

“(a) The revenue derived from any occupancy tax authorized or validated by this Act may only be used for:

“(1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities including, but not limited to, civic center convention buildings, auditoriums, coliseums, civic theaters, museums, and parking areas or facilities for the parking or storage of motor vehicles or other conveyances located at or in the immediate vicinity of the convention center facilities;

“(2) the furnishing of facilities, personnel and materials for the registration of convention delegates or registrants;

“(3) for advertising for general promotional and tourist advertising of the city and its vicinity and conducting a solicitation and operating program to attract conventions and visitors either by the city or through contracts with persons or organizations selected by the city;

“(4) the encouragement, promotion, improvement, and application of the arts, including music (instrumental and vocal), dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, television, radio, tape and sound recordings, and the arts related to the presentation, performance, execution, and exhibitions of these major art forms;

“(5) historical preservation and restoration.”

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Appendix C

TCA HOT Survey Questions

- 1) What was your total operating budget for FY 2003?
- 2) During that year, did you receive hotel occupancy tax (HOT) revenue?
If so, how much did you receive?
- 3) What percentage of the occupancy tax collected in your community are you getting?
- 4) Aside from HOT revenue, what are your other major sources of revenue? Other taxes? Grants from government or private sources? Ticket sales? Rentals? Tuition?
How much revenue do you receive from these sources?
- 5) What are the major programs/services that you offer?
- 6) Of these programs and services, which are partly or completely funded by HOT revenue?
What percentage of the HOT money is used to fund these programs?
- 7) Has the level of HOT funding that you receive changed in the last 4 years?
If so, has the amount of HOT funding you received gone up or down?
By how much?
- 8) If your HOT funding has declined, have you been able to find other funding sources?
What are those sources and how much funding do you receive from them?
- 9) Please describe the application process for HOT funding.
What information do you have to provide before and after receiving HOT funding?
- 10) If you are a subgranting organization, what are your requirements for giving HOT revenue?
Do you track or evaluate the economic impact or the ability to attract tourism of the organizations you award grants to?
- 11) Have the application process or information required to receive HOT funding changed in the last 4 years?
If so, how have they changed?
- 12) Are there any of your programs or services that used to receive HOT funding but no longer do?
When did they last receive funding?
Why was did this funding end?
- 13) Have you added, dropped, or changed any programs or services in response to HOT funding requirements?
- 14) Does any of your budget go to marketing/advertising?

If so, how much and what sources/methods do you use?
If not, do you utilize any no-cost methods of advertising?

15) Do you do any marketing/advertising out of your local area?
If so, please describe what you do.

16) Do you work with any other organizations or businesses to do collective or cooperative marketing/advertising?

17) Do you make any effort to track people who attend or participate in your programs or services?
If so, what information do you collect?
If not, why not?

18) Do you work with any area hotels/motels to attract visitors?
If so, what is the nature of this partnership?
How successful has the partnership been?

Appendix D

Results from the 2004 TCA Hotel Occupancy Tax Survey of 44 LAAs (of the approximately 125 operating in the State of Texas)

Operating budget for Fiscal Year 2003 (n=44):

Total.....	\$33,212,969
Average.....	\$754,840

HOT revenue received by LAAs in FY 2004 (n=44):

Total.....	\$17,994,913
Average.....	\$408,975

HOT revenue as a percentage of total operating budget for LAAs in FY2003 (n=44).....	54.2%
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Average percentage of total HOT revenue collected by the municipality that is allocated to the survey respondent (n=34).....	13.3% ⁴⁰
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Percentage of LAAs receiving at least the maximum amount ⁴¹ of HOT revenue allowed under Texas Tax Code Section 351.101(a) (6) (n=34).....	31.8%
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Amount of LAA revenue from other government sources (n=44):

Total.....	\$4,537,102
Other city ⁴²	\$2,213,965
TCA.....	\$1,999,587
County.....	\$176,550
State ⁴³	\$95,000
TIFD ⁴⁴	\$21,000
University ⁴⁵	\$18,000
NEA.....	\$10,000
MAA ⁴⁶	\$3,000

Percentage of LAAs that partially or completely fund the activity with HOT revenue⁴⁷ (n=42):

Subgranting.....	54.8%
Presenting.....	38.1%
Marketing.....	35.7%
General operations.....	33.3%
Exhibitions.....	28.6%
Facility costs.....	28.6%
Arts education.....	21.4%
Festival.....	16.7%
Children's theater.....	11.9%
Public art.....	7.1%
Adult workshops.....	4.8%

Community arts.....	4.8%
Changes in HOT revenue since 2000 ⁴⁸ (n=44):	
No change.....	47.7%
Significantly higher.....	25.0%
Significantly lower.....	27.3%
Total change in HOT funding since 2000 ⁴⁹ (n=44).....	-\$1,916,968
Percentage of LAAs with significantly reduced HOT funding since 2000 that were able to find other funding sources (n=11).....	36.4%
Percentage of LAAs that report tourism data ⁵⁰ as part of their HOT funding process (n=41).....	39.0%
Percentage of HOT-funded subgranting organizations that require their subgrantees to report tourism data in either the grant application or review (n=43).....	65.2%
Percentage of LAAs who had changes to the application process tightened ⁵¹ since 2000 to address cultural tourism (n=37).....	33.3%
Percentage of LAAs that have lost funding for or added dropped or changed programs in since 2000 in response to HOT funding requirements (n=41).....	14.6%
Reported advertising expenses for LAAs in FY2003 ⁵² (n=43):	
Total.....	\$1,226,689
Average.....	\$28,528
Advertising expenses as a percentage of total expenses (n=43).....	3.7%
Percentage of LAAs that advertise outside of their local area ⁵³ (n=42).....	66.7%
Percentage of LAAs that do collective advertising ⁵⁴ with another entity (n=42).....	78.6%
Percentage of LAAs that collect tourism data for events, activities, or exhibits that they produce (n=41).....	63.4%
Percentage of LAAs that have an ongoing collaborative relationship ⁵⁵ with local hotels to attract tourists (n=42).....	47.6%

¹ Texas Tax Code, Sec. 351.101 (a).

² Texas Tax Code, Sec. 351.101 (b).

³ See Texas Tax Code, Sec. 351.101 (a) (1), (2), and (6), respectively.

⁴ Texas Tax Code, Sec. 351.101 (a) (3).

⁵ Texas Tax Code, Sec. 351.101 (a) (4).

⁶ Texas Tax Code, Sec. 351.101 (a) (5).

⁷ Texas Tax Code, Sec. 351.101 (a) (4) (A) and (B), respectively.

⁸ Texas Tax Code, Sec. 351.101 (e).

⁹ Texas Tax Code, Sec. 351.108 (a).

¹⁰ Texas Tax Code, Sec. 351.108 (b) (1) and (2). Although the statute requires that the list be made before the activities are funded, it does allow the municipality or funded entity to add activities programs, or events to the list so long as they are “directly enhancing and promoting tourism and the convention industry.”

¹¹ Texas Tax Code, Sec. 351.101 (g).

¹² See Texas Tax Code, Sec. 351.101 (a) (3).

¹³ Texas Tax Code, Sec. 351.101 (b).

¹⁴ Office of the Attorney General of Texas, Opinion No. GA-0124 (November 18, 2003).

¹⁵ Texas Bill 298, 65th Legislature (1977).

¹⁶ The legislation that established the three categories for HOT spending was Senate Bill 911 from the 62nd Texas State Legislature (1971). As originally written, S.B. 911 would have allowed cities to spend HOT revenue on bonds “in order to obtain civic centers, auditoriums, exhibition halls, libraries, and similar buildings.” The inclusion of “libraries and similar buildings” indicates that the originally proposed legislation was focused on more broadly defined municipal capital development as opposed to the limited focus on the convention industry in bill that was signed into law. The exclusion of libraries and the inclusion of categories (2) and (3) above indicate that the intent of the bill shifted from funding improvements that would benefit conventioners and citizens of a city to one would benefit primarily conventioners.

¹⁷ Office of the Attorney General of Texas, Opinion No. JM-690 (May 7, 1987).

¹⁸ The Lalor Law was accompanied by S.B. 333, which raised the maximum municipal HOT rate from 3% to 4%, thus allowing cities to add funding for arts and historical preservation without diminishing existing funding to the convention industry.

¹⁹ Texas House Bill 298, 65th Legislature (1977).

²⁰ Office of the Attorney General of Texas, Opinion No. JM-690 (May 7, 1987).

²¹ Texas House of Representatives, Bill Analysis of House Bill 298, 65th Legislature (1977).

²² Texas House of Representatives, Bill Analysis of House Bill 1836, 68th Legislature (1983).

²³ Ibid.

²⁴ Texas House Bill 1836, 68th Legislature (1983).

²⁵ Texas Senate Bill 888, 70th State Legislature (888).

²⁶ Texas Senate Bill 1532, 70th State Legislature (888).

²⁷ Ibid.

²⁸ Office of the Attorney General of Texas, Opinion No. JM-965 (October 18, 1988).

²⁹ Texas House Bill 1110, 71st State Legislature (1989).

³⁰ Texas House Bill 2844, 76th State Legislature (1999).

³¹ Texas House of Representatives, Bill Analysis of House Bill 1022, 77th Legislature (2001).

³² Texas House Bill 1022, 77th Legislature (2001).

³³ Texas House of Representatives, Bill Analysis of House Bill 1022, 77th Legislature (2001).

³⁴ Most cities are limited to spending no more than 15% of the total amount of HOT revenue collected or the amount of tax received at the rate of 1% of the cost of a hotel room, whichever is larger, on the arts. However, some LAAs receive more than the maximum allowed for the arts because they also receive HOT funding for approved uses such as advertising, historic preservation, or the management of a convention center.

³⁵ The numbers in parentheses represent the percentage of survey respondents who reported funding all or some of the activities with HOT revenue; they do not represent the percentage of total funding for the activity that comes from HOT revenue.

³⁶ “Tourism data” includes any information that could indicate that participants or attendees traveled from out of the municipality to attend or visit the event, program, or facility. For instance, collected zip codes, hotel nights generated, or hometowns collected from a guest book are all considered tourism data; attendance figures are not, since they only indicate the total number of people who attended or visited an event, program, or facility and not where they traveled from.

³⁷ Texas Tax Code, Sec. 351.101 (b).

³⁸ Office of the Attorney General of Texas, Opinion No. GA-0124 (November 18, 2003).

³⁹ The numbers for marketing expenses should be treated as a very rough estimate. Few LAAs track marketing as an individual category in their budget and thus had to estimate values based on printing costs, staff time, advertisements purchased, etc.

⁴⁰ Not all respondents knew what percentage of the hotel HOT revenue collected in their municipality they were receiving. If they felt capable of making a reasonable guess, that number was included. If not, their information was not included in this calculation.

⁴¹ Municipalities can allocate no more than 15% of the total amount of HOT revenue or the amount of 1% of the cost of a hotel room, whichever is greater to the arts. However, some LAAs receive more than this amount of HOT funding because they are also receiving HOT funding for other uses approved in Section 351.101(a) of the Texas Tax Code, such as historical preservation, advertising, or the operation of convention center facilities.

⁴² Other city revenue includes all municipal revenues other than HOT revenue. This includes general revenue funds, ad valorem, and sales taxes.

⁴³ \$95,000 in funding to one respondent from the State of Arkansas.

⁴⁴ \$21,000 in funding to one respondent from a tax increment finance district.

⁴⁵ \$18,000 in funding to one respondent from a public university.

⁴⁶ \$3,000 in funding to one respondent from the Mid-America Arts Alliance.

⁴⁷ Responses were grouped into categories after surveys had been administered. Many respondents did not consider “general operations” to be a

program or activity when responding to the question, so the actual number of LAAs that fund general operations with HOT revenue is likely underrepresented here.

⁴⁸ Survey respondents were not told what constituted a “significant” change in HOT funding. Thus, they answered based on what they considered to be a change that would affect the operations of their organization. Thus, some organization may have reported a 5% drop in funding as significant, while other may have reported it as insignificant.

⁴⁹ The total change in HOT funding was calculated based on responses from survey participants, and not on information collected by the State of Texas, the hotel industry, or any other party. These responses took the form of percentage changes and dollar amounts. Because many respondents had only been with their organizations a short time, some responses were broad estimates.

⁵⁰ For the purposes of this survey, “tourism data” were defined as any information that would allow one to determine how many participants at an event traveled from outside of the municipality. This includes zip codes and hometown of the participants or hotel night generated, but does not include head count.

⁵¹ Tightened requirements include any attempt to include a cultural tourism requirement in the application or evaluation process for HOT revenue. This includes the collection of tourism data, but also includes qualitative criteria and other measures that would not require the collection of data.

⁵² This only includes purchased advertising; in-kind advertising was not taken into account. Most respondents were only able to estimate their total marketing expenditures.

⁵³ Survey respondents were allowed to define what “local area” means for their own organization. However, tangible advertising outside of the local area was counted as a positive response. Thus, radio and television advertisements, billboards, and magazines would all count as positive responses, while web sites, which could theoretically reach a much larger audience, were not.

⁵⁴ Collaborative advertising includes any relationship with other arts or nonprofit organizations, chambers of commerce, tourism, convention, or visitors bureaus, private entities (such as retail or hospitality businesses) that has at its purpose the promotion of tourism.

⁵⁵ An “ongoing collaborative relationship” was defined as one in which management of the LAA was in regular contact with management from the hotel industry and in which both parties were receiving benefit. This includes relationships in which representatives from the hotel industry sit on the LAA’s board, in which representatives from the LAA sit on a board with representatives from the hotel industry, or in which a hotel provides blocks of rooms or otherwise contributes to the sponsorship of an event or season. It does not include the location of brochures in a hotel lobby or other activities in which most of the contact between the LAA and the hotel is via front-desk staff.