

Honolulu, Hawaii

MAR 23 2018

RE: H.B. No. 2605
H.D. 2
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committees on Economic Development, Tourism, and Technology and Public Safety, Intergovernmental, and Military Affairs, to which was referred H.B. No. 2605, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO TRANSIENT ACCOMMODATIONS,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Provide that a county shall be eligible to receive an unspecified amount from the State to enforce all applicable laws and ordinances relating to transient accommodations; provided that no funds shall be released to a county unless it has complied with certain conditions;
- (2) Make an appropriation out of the transient accommodations tax revenue to the counties to enforce all applicable laws and ordinances relating to transient accommodations and short-term vacation rentals; provided that no county shall receive more than an unspecified amount; and
- (3) Require a report from the counties receiving funds for enforcement of laws and ordinances relating to transient accommodations and short-term vacation rentals.



Prior to the hearing on this measure, your Committees posted and made available for public review a proposed S.D. 1, which deletes the contents of the measure and inserts language that:

- (1) Establishes a one-time amnesty program for certain delinquent transient accommodations and general excise tax obligations;
- (2) Allows transient accommodations brokers to register as tax collection agents on behalf of their operators and plan managers;
- (3) Requires operators and plan managers to provide a statement to the transient accommodations broker confirming compliance with all applicable land use and tax laws;
- (4) Requires an operator or plan manager to provide verification of compliance with state and county land use laws;
- (5) Requires an operator or plan manager to remove a transient accommodation advertisement upon notice that the property is not in compliance;
- (6) Makes it unlawful for transient accommodations brokers to engage in business with operators or plan managers that are not in compliance with all state laws and county ordinances;
- (7) Provides that a violation of a county zoning ordinance adopted under section 46-4, Hawaii Revised Statutes, may additionally prescribe a penalty of a class C felony;
- (8) Authorizes counties to disgorge profits obtained through unfair or unlawful business practices;
- (9) Authorizes counties to adopt ordinances to amortize or phase out transient vacation rental units;
- (10) Imposes a civil fine ranging from \$25,000 to \$100,000 on operators or plan managers who fail to remove an



advertisement for a transient accommodation after receiving notice that the subject property is not in compliance with state law or county ordinance;

- (11) Requires the counties to adopt ordinances prohibiting transient accommodations brokers from engaging in business with operators or plan managers who are not in compliance with all state laws and county ordinances;
- (12) Requires the Director of Taxation to make available, by January 1, 2019, a form for transient accommodations brokers to apply for registration as a tax collection agent;
- (13) Allocates an unspecified percentage of general excise tax and transient accommodations tax revenues to the counties, depending on the establishment of a process to provide verification of compliance by an operator or plan manager with county land use ordinances;
- (14) Makes it unlawful for a hosting platform to provide, or collect a fee for, booking services regarding transient vacation rentals that are not lawfully certified, registered, or permitted under applicable county ordinance; and
- (15) Makes the measure effective upon approval.

Your Committees received testimony in support of the proposed S.D. 1 from the Office of the Governor; Department of Taxation; Office of Hawaiian Affairs; Department of Planning and Permitting, City and County of Honolulu; Planning Department, County of Kauai; Hawai'i Lodging and Tourism Association; American Hotel and Lodging Association; UNITED HERE Local 5; Hilton Hawaii; Kohala Coast Resort Association; Westin Princeville Ocean Resort Villas; Hawaii Advocates for Consumer Rights; ILWU Local 142; Napili Kai Beach Resort; one member of the Hawaii County Council; one member of the Maui County Council; and nine individuals. Your Committees received testimony in opposition to the proposed S.D. 1 from Airbnb; Kobayashi Sugita and Goda; Expedia, Inc.; Coalition for Equal Taxation; Hawaii Life Real Estate Brokers; Rental by Owner Awareness Association; NetChoice; Oahu Alternative Lodging Association; and forty-one individuals. Your Committees received



comments on the proposed S.D. 1 from the Department of the Attorney General; Hawaii Tourism Authority; Office of the Mayor, County of Hawai'i; Tax Foundation of Hawaii; Hawai'i Association of REALTORS; Keep it Kailua; and Kuilima Estates East.

Your Committees note that the proposed S.D. 1 is substantially similar to S.B. No. 2963, S.D. 1, which was previously passed by the Senate and differs from the proposed S.D. 1 by, among other things:

- (1) Making various amendments to the tax amnesty program;
- (2) Requiring transient accommodation brokers who want to register as tax collection agents to agree in writing that continuing to collect fees for booking services for seven days after receiving notice that the property is not in compliance with state or county law is a violation of the tax collection agreement;
- (3) Reducing the offense for transient accommodations brokers who engage in business with operators or plan managers that are not in compliance with state laws and county ordinances from a class C felony to a misdemeanor, punishable by a minimum fine of \$25,000;
- (4) Allowing the counties to penalize a violation of a county transient accommodations ordinance with a minimum civil penalty of \$25,000, rather than a class C felony for a violation of a county zoning ordinance;
- (5) Amending the penalty for operators or plan managers who fail to remove an advertisement of a noncompliant transient accommodation to a minimum \$25,000 fine;
- (6) Deleting the date by which the Director of Taxation must make a form available to apply for registration as a tax collection agent;
- (7) Changing the allocation to the counties from an unspecified percentage of general excise tax and transient accommodations tax revenues to a maximum of \$1,000,000 in transient accommodations tax revenues per



county for implementation or enforcement of county land use ordinances; and

- (8) Clarifying that the penalty for hosting platforms that provide, or collect a fee for, booking services from transient vacation rentals that are not lawfully certified, registered, or permitted under applicable county ordinance is a misdemeanor, punishable by a minimum fine of \$25,000.

Your Committees find that S.B. No. 2963, S.D. 1, better reflects the intent of your Committees to establish a means to collect revenue due to the State and better ensure that operators or plan managers of transient accommodations are complying with state laws and county ordinances. Your Committees find that given the prominence of transient accommodations in Hawaii, more effort needs to be put toward strengthening county enforcement of laws and ordinances relating to transient accommodations.

Your Committees recognize that the Department of Taxation already has a voluntary disclosure program that allows taxpayers to voluntarily disclose tax liabilities. Therefore, your Committees find that establishing another tax amnesty program may be redundant and is unnecessary.

Your Committees further find that the Department of the Attorney General proposed amendments to change the placement in the Hawaii Revised Statutes of the language making it unlawful for transient accommodations brokers to engage in business with operators or plan managers who are noncompliant with state laws or county ordinances and language making it unlawful for hosting platforms to provide, and collect a fee for, booking services in connection with transient vacation rentals that are not lawfully certified, registered, or permitted. According to the Department of the Attorney General, the proposed amendments would make those provisions be enforced by the county, rather than other agencies; more closely resemble industry regulation, rather than consumer protection regulation; and avoid the unintentional application of the unfair or deceptive acts or practices law.

Accordingly, your Committees have amended this measure by deleting its content and replacing it with language from S.B. No. 2963, S.D. 1, and further amending it by:



- (1) Deleting part I, which would have established a one-time tax amnesty program;
- (2) As suggested by the Department of the Attorney General, changing the placement of the prohibitions on transient accommodations brokers and hosting platforms from transacting with noncompliant operators, plan managers, or transient vacation rentals and making further clarifying amendments;
- (3) Giving the counties more discretion in establishing ordinances and penalties by replacing the word "shall" with "may" in certain sections; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Economic Development, Tourism, and Technology and Public Safety, Intergovernmental, and Military Affairs that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2605, H.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2605, H.D. 2, S.D. 1, and be referred to your Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Economic
Development, Tourism, and
Technology and Public Safety,
Intergovernmental, and Military
Affairs,

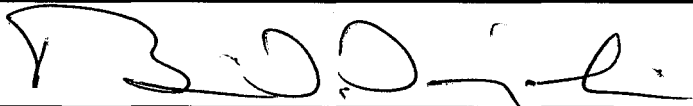

CLARENCE K. NISHIHARA, Chair


GLENN WAKAI, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Economic Development, Tourism, and Technology
ETT

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 2605 HD2	ETT/PSM, WAM	3/21/18		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
WAKAI, Glenn (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
BAKER, Rosalyn H.	✓			
GALUTERIA, Brickwood				✓
THIELEN, Laura H.	✓			
TOTAL	4	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Public Safety, Intergovernmental, and Military Affairs
PSM

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HB 2605, HD 2	ETT/PSM, WAM	3-21-18

The Committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312 Pass, with amendments 2311 Hold 2310 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
NISHIHARA, Clarence K. (C)	✓			
WAKAI, Glenn (VC)	✓			
BAKER, Rosalyn H.	✓			
IHARA, Jr., Les	✓			
THIELEN, Laura H.	✓			
TOTAL				

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature: _____

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