

1 assessment or any part thereof has become final. Assessments
2 that have not been appealed shall be final, due, and owing
3 thirty days after service of notice of assessment.

4 "Taxpayer" means any individual, partnership, joint
5 venture, association, corporation, receiver, trustee, guardian,
6 executor, administrator, fiduciary, or any other entity of any
7 kind subject to the general excise tax under chapter 237, Hawaii
8 Revised Statutes, or the transient accommodations tax under
9 chapter 237D, Hawaii Revised Statutes, or any person required to
10 collect and remit to the State the general excise tax or
11 transient accommodations tax.

12 **SECTION 2. Tax amnesty program; applicable time period.**

13 (a) The director shall develop and administer a one-time tax
14 amnesty program as provided in this part. The director, upon
15 the voluntary return and remission of transient accommodations
16 or general excise taxes and interest owed by any taxpayer, shall
17 waive all penalties that are assessed or subject to being
18 assessed for outstanding liabilities for taxable periods ending
19 or transactions occurring on or before December 31, 2017. The
20 director shall adopt rules, pursuant to chapter 91, Hawaii
21 Revised Statutes, necessary for the administration of this



1 amnesty program and shall further provide for necessary forms
2 for the filing of amnesty applications and returns.

3 (b) Notwithstanding any other law to the contrary, the tax
4 amnesty program shall begin no later than October 31, 2018, and
5 shall be completed before January 1, 2019, and shall apply to
6 all taxpayers owing taxes, penalties, or interest administered
7 by the director under chapters 237 and 237D, Hawaii Revised
8 Statutes.

9 SECTION 3. **Application; eligibility requirements.** (a)

10 This part shall apply to any taxpayer who files an application
11 for amnesty within the time prescribed by the director and who:

12 (1) Files all returns as may be required by the director
13 for all years or tax reporting periods as stated on
14 the application:

15 (A) For which returns have not previously been filed;

16 and

17 (B) For which returns were filed but the tax
18 liability was underreported; and

19 (2) Pays in full the taxes due for the years and tax
20 reporting periods stated on the application, at the
21 time the application is made or amnesty tax returns



1 are filed within the designated amnesty program
2 period.

3 In addition to the requirements set forth in paragraphs (1) and
4 (2), the director may impose, by rule, the further condition
5 that any eligible taxpayer pay in full, within the amnesty
6 period, all taxes previously assessed by the director that are
7 final, due, and owing at the time the application or amnesty tax
8 returns are filed.

9 (b) An eligible taxpayer may participate in the amnesty
10 program regardless of whether the taxpayer is under audit,
11 notwithstanding the fact that the amount due is included in a
12 proposed assessment or an assessment, bill, notice, or demand
13 for payment issued by the director and without regard to whether
14 the amount due is subject to a pending administrative or
15 judicial proceeding. An eligible taxpayer may participate in
16 the amnesty program to the extent of the uncontested portion of
17 any assessed liability. However, participation in the program
18 shall be conditioned upon the taxpayer's agreement that the
19 right to protest or initiate an administrative or judicial
20 proceeding or to claim any refund of moneys paid under the



1 program is barred with respect to the amounts paid with the
2 application or amnesty return.

3 (c) The director shall allow installment payment
4 agreements in cases of severe hardship in lieu of the complete
5 payment required under subsection (a). In those cases, twenty-
6 five per cent of the amount due shall be paid with the
7 application or amnesty return, with the balance to be paid in
8 monthly installments determined by the taxpayer and the
9 director. Failure of the taxpayer to make timely payments shall
10 void the terms of the amnesty. All agreements and payments
11 shall not include interest due and accruing during the
12 installment agreement.

13 SECTION 4. **Amnesty provisions.** (a) Amnesty shall be
14 granted for any taxpayer who meets the requirements of section 3
15 of this Act in accordance with the following:

16 (1) For taxes that are owed as a result of the
17 nonreporting or underreporting of transient
18 accommodations or general excise tax liabilities or
19 the nonpayment of any accounts receivable owed by an
20 eligible taxpayer, the State shall waive criminal
21 prosecution and all civil penalties that may be



1 assessed under title 14, Hawaii Revised Statutes, for
2 the taxable years or periods for which the tax amnesty
3 is requested; and

4 (2) With the exception of instances in which the taxpayer
5 and director enter into an installment payment
6 agreement authorized under section 3(c) of this Act,
7 the failure to pay all taxes as shown on the
8 taxpayer's amnesty tax return shall invalidate any
9 amnesty granted pursuant to this part.

10 (b) This part shall not apply to any taxpayer who is on
11 notice, written or otherwise, that the taxpayer is the subject
12 of any criminal investigation or criminal prosecution for
13 nonpayment, delinquency, evasion, or fraud in relation to any
14 federal taxes, the state general excise tax, or the transient
15 accommodations tax.

16 (c) No refund or credit shall be granted for any interest
17 or penalty paid prior to the time the taxpayer requests amnesty
18 pursuant to section 3 of this Act.

19 (d) Unless the director, in the director's discretion,
20 redetermines the amount of transient accommodations or general
21 excise taxes and interest due, no refund or credit shall be



1 other similar business to enter into an agreement with the
2 department of taxation to act as a tax collection agent on
3 behalf of its direct sellers. The legislature finds that
4 similarly allowing a transient accommodations broker to act as a
5 tax collection agent on behalf of providers of transient
6 accommodations that utilize the services of the transient
7 accommodations broker may facilitate the collection of transient
8 accommodations taxes and general excise taxes.

9 The legislature further finds that, to increase
10 transparency and ensure the veracity of the taxes being
11 collected, transient accommodations brokers acting as tax
12 collection agents must provide pertinent information to the
13 department of taxation regarding the operators and plan managers
14 on whose behalf they collect taxes.

15 The purpose of this part is to allow a transient
16 accommodations broker to register to act as a tax collection
17 agent with respect to transient accommodations taxes and general
18 excise taxes for its operators and plan managers in a manner
19 that recognizes the dynamic changes that are occurring in the
20 transient accommodations business.

21 This part is not intended to:



1 (1) Preempt or otherwise limit the authority of the
2 counties to adopt, monitor, and enforce local land use
3 regulations;

4 (2) Transfer the authority to monitor and enforce the
5 regulations away from the counties; or

6 (3) Violate any federal laws.

7 This part is not intended to create, and does not create,
8 any rights or benefits, whether substantive or procedural, or
9 enforceable at law or in equity, against the State of Hawaii or
10 its agencies, departments, entities, employees, or any other
11 person.

12 SECTION 8. Chapter 237, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§237- Transient accommodations broker as tax
16 collection agent. (a) The director may permit a transient
17 accommodations broker to register as a tax collection agent on
18 behalf of all of its operators and plan managers by entering
19 into a tax collection agreement with the director or by
20 submitting a tax collection agent registration statement to the
21 director; provided that the transient accommodations broker has



1 obtained written consent from the operators and plan managers
2 for the periodic returns and disclosure of information required
3 under subsection (g) and agrees to furnish information to the
4 counties as required in subsection (g). Any tax collection
5 agreement entered into pursuant to this section shall be subject
6 to and in accordance with all applicable provisions of state law
7 and county ordinances and shall not permit a tax collection
8 agent, nor any operator or plan manager conducting business
9 through the tax collection agent, to opt out of any requirements
10 or obligations under state law or county ordinance.

11 The director may deny an application for registration as a
12 tax collection agent under this section for any cause authorized
13 by law, including but not limited to any violation of this
14 chapter or rules adopted pursuant thereto, violation of any
15 prior tax collection agreement, or failure to meet minimum
16 criteria that may be set forth by the department in rules
17 adopted pursuant to chapter 91.

18 The director shall issue a certificate of registration or
19 letter of denial within thirty days after a transient
20 accommodations broker submits to the director a completed and



1 signed tax collection agent registration statement, in a form
2 prescribed by the department.

3 The registration shall be valid only for the tax collection
4 agent in whose name it is issued, and for the website or
5 platform designated therein, and shall not be transferable.

6 (b) In addition to its own responsibilities under this
7 chapter, a registered tax collection agent shall report,
8 collect, and pay over the taxes due under this chapter on behalf
9 of all of its operators and plan managers from the date of
10 registration until the registration is canceled as provided in
11 subsection (h); provided that the registered tax collection
12 agent's obligation to report, collect, and pay taxes on behalf
13 of all of its operators and plan managers shall apply solely to
14 transient accommodations in the State arranged or booked
15 directly through the registered tax collection agent.

16 (c) The registered tax collection agent's operators and
17 plan managers shall obtain licensure under this chapter and
18 remain subject to the requirements of title 14; provided that
19 the registered tax collection agent shall report, collect, and
20 pay the taxes under this chapter on behalf of the operators and
21 plan managers for business activity conducted directly through



1 the agent, as set forth in this section, from the date of
2 registration until the registration is canceled as provided in
3 subsection (h). For purposes of any other business activity,
4 the operators and plan managers shall be subject to all
5 requirements of title 14 and all county ordinances and rules
6 regulating short-term rentals, vacation rentals, or bed and
7 breakfast lodging within their jurisdictions as if this section
8 did not exist.

9 A registered tax collection agent shall be issued separate
10 licenses under this chapter with respect to taxes payable on
11 behalf of its operators and plan managers in its capacity as a
12 registered tax collection agent and, if applicable, with respect
13 to any taxes payable under this chapter for its own business
14 activities.

15 (d) If the registered tax collection agent fails to report
16 or pay the taxes under this chapter on behalf of the operators
17 and plan managers, as set forth in this section, the registered
18 tax collection agent and the operator or plan manager shall be
19 jointly and severally liable for the taxes due under this
20 chapter, including penalties and interest as provided by law,
21 with respect to their business activities conducted directly



1 through the registered tax collection agent from the date of
2 registration until the registration is canceled as provided in
3 subsection (h).

4 (e) A tax collection agent shall be personally liable for
5 the taxes imposed by this chapter that are due and collected on
6 behalf of operators and plan managers, if taxes are collected,
7 but not reported or paid, together with penalties and interest
8 as provided by law. If the tax collection agent is an entity,
9 the personal liability under this subsection shall apply to any
10 officer, member, manager, or other person who has control or
11 supervision over amounts collected to pay the taxes or who is
12 charged with the responsibility for the filing of returns or the
13 payment of taxes.

14 (f) Except as provided in subsection (g), all returns and
15 other information provided by a registered tax collection agent,
16 including the application for registration as a tax collection
17 agent or any tax collection agreement, shall be confidential,
18 and disclosure thereof shall be prohibited as provided in
19 section 237-34.

20 (g) A registered tax collection agent shall file periodic
21 returns in accordance with section 237-30 and annual returns in



1 accordance with section 237-33. Each periodic return required
2 under section 237-30 shall be accompanied by an electronic cover
3 sheet, in a form prescribed by the department that includes the
4 following information:

- 5 (1) For each operator and plan manager on whose behalf the
6 tax collection agent is required to report, collect,
7 and pay over taxes due under this chapter, the
8 operator's or plan manager's name, address, and
9 license identification number; and
- 10 (2) For each transient accommodation, rented through the
11 registered tax collection agent or the website or
12 platform designated in the certificate of registration
13 issued pursuant to chapter 237D, for which taxes are
14 being remitted pursuant to this chapter:
- 15 (A) The address of the transient accommodation;
- 16 (B) The number of nights that each transient
17 accommodation was rented and the rate or price at
18 which each transient accommodation was rented;
19 and
- 20 (C) The amount of tax being remitted pursuant to this
21 chapter and the amount of any federal form 1099



1 income that was derived from each transient
2 accommodation.

3 Upon request by the planning director or mayor of the
4 applicable county, a registered tax collection agent shall
5 disclose any of the information contained in the returns or
6 cover sheets required by this subsection to the planning
7 director or any county official designated by the mayor to
8 receive the information. Notwithstanding any law to the
9 contrary, including section 237-34, the planning director and
10 county official designated to receive the information pursuant
11 to this subsection may examine and copy the returns and cover
12 sheets to ensure compliance with this section, state tax laws
13 and county tax ordinances, and any applicable land use laws and
14 ordinances.

15 (h) The registration provided for under this section shall
16 be effective until canceled in writing.

17 A registered tax collection agent may cancel its
18 registration under this section by delivering written notice of
19 cancellation to the director and each of its operators and plan
20 managers furnishing transient accommodations in the State not



1 later than ninety days prior to the effective date of
2 cancellation.

3 The director may cancel a tax collection agent's
4 registration under this section for any cause, including but not
5 limited to any violation of this chapter or rules adopted
6 pursuant thereto, or for violation of any applicable tax
7 collection agreement, by delivering written notice of
8 cancellation to the tax collection agent not later than ninety
9 days prior to the effective date of cancellation.

10 (i) All transient accommodations brokers, prior to
11 publishing an advertisement, including an online advertisement,
12 on the availability of a property for lease or rent on behalf of
13 an operator or plan manager:

14 (1) Shall notify the operator or plan manager that the
15 subject property is required to be in compliance with
16 applicable state and county land use laws and
17 ordinances prior to retaining the services of the
18 transient accommodations broker;

19 (2) Shall require the operator or plan manager to provide
20 the transient accommodations broker with the
21 operator's or plan manager's transient accommodations



1 number and local contact information and include this
2 information in the advertisement, pursuant to section
3 237D-4;

4 (3) Shall require the operator or plan manager to provide
5 the transient accommodations broker with verification
6 of compliance with state and county land use laws in
7 the form of a written certification, verification, or
8 permit, as applicable, issued by the appropriate
9 county agency; and

10 (4) Shall require the operator or plan manager to provide
11 a statement to the transient accommodations broker
12 confirming compliance with all applicable land use
13 laws and ordinances.

14 An operator or plan manager shall remove any advertisement
15 published through the transient accommodations broker, including
16 an online advertisement, for a transient accommodation located
17 in the State for which the operator or plan manager fails to
18 comply with paragraph (2), (3), or (4) or for which the operator
19 or plan manager has received written notice from a state or
20 county governmental authority that the property is not in
21 compliance with state law or county ordinance, as applicable.



1 The state or county governmental authority shall provide a copy
2 of the written notice to the transient accommodations broker.

3 (j) Nothing in this section shall be construed to preempt
4 or prohibit the authority of a unit of local government in the
5 State, including counties and any other political subdivisions
6 of the State, to adopt, monitor, and enforce local land use
7 ordinances, rules, or regulations, nor to transfer the authority
8 to monitor and enforce these ordinances, rules, or regulations
9 away from the counties.

10 (k) For the purposes of this section:

11 "Director" means the director of taxation.

12 "Operator" has the same meaning as in section 237D-1.

13 "Plan manager" has the same meaning as in section 237D-1.

14 "Transient accommodations" has the same meaning as in
15 section 237D-1.

16 "Transient accommodations broker" has the same meaning as
17 in section 237D-1."

18 SECTION 9. Chapter 237D, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:



1 "§237D- Transient accommodations broker as tax
2 collection agent. (a) The director may permit a transient
3 accommodations broker to register as a tax collection agent on
4 behalf of all of its operators and plan managers by entering
5 into a tax collection agreement with the director or by
6 submitting a tax collection agent registration statement to the
7 director; provided that the transient accommodations broker has
8 obtained written consent from the operators and plan managers
9 for the periodic returns and disclosure of information required
10 under subsection (g) and agrees to furnish information to the
11 counties as required in subsection (g). Any tax collection
12 agreement entered into pursuant to this section shall be subject
13 to and in accordance with all applicable provisions of state law
14 and county ordinances and shall not permit a tax collection
15 agent, nor any operator or plan manager conducting business
16 through the tax collection agent, to opt out of any requirements
17 or obligations under state law or county ordinance.

18 The director may deny an application for registration as a
19 tax collection agent under this section for any cause authorized
20 by law, including but not limited to any violation of this
21 chapter or rules adopted pursuant thereto, violation of any



1 prior tax collection agreement, or failure to meet minimum
2 criteria that may be set forth by the department in rules
3 adopted pursuant to chapter 91.

4 The director shall issue a certificate of registration or
5 letter of denial within thirty days after a transient
6 accommodations broker submits to the director a completed and
7 signed tax collection agent registration statement, in a form
8 prescribed by the department. The registration shall be valid
9 only for the tax collection agent in whose name it is issued,
10 and for the website or platform designated therein, and shall
11 not be transferable.

12 A registered tax collection agent shall be issued separate
13 certificates of registration under this chapter with respect to
14 taxes payable on behalf of its operators and plan managers in
15 its capacity as a registered tax collection agent and, if
16 applicable, with respect to any taxes payable under this chapter
17 for its own business activities.

18 (b) In addition to its own responsibilities under this
19 chapter, a registered tax collection agent shall report,
20 collect, and pay over the taxes due under this chapter on behalf
21 of all of its operators and plan managers from the date of



1 registration until the registration is canceled as provided in
2 subsection (h); provided that the registered tax collection
3 agent's obligation to report, collect, and pay taxes on behalf
4 of all of its operators and plan managers shall apply solely to
5 transient accommodations in the State arranged or booked
6 directly through the registered tax collection agent.

7 (c) The registered tax collection agent's operators and
8 plan managers shall obtain registration under this chapter and
9 remain subject to the requirements of title 14; provided that
10 the registered tax collection agent shall report, collect, and
11 pay the taxes under this chapter on behalf of the operators and
12 plan managers for business activity conducted directly through
13 the registered tax collection agent, as set forth in this
14 section, from the date of registration until the registration is
15 canceled as provided in subsection (h). For purposes of any
16 other business activity, the operators and plan managers shall
17 be subject to all requirements of title 14 and all applicable
18 ordinances and rules regulating short-term rentals, vacation
19 rentals, or bed and breakfast lodging within their jurisdictions
20 as if this section did not exist.



1 (d) If the registered tax collection agent fails to report
2 or pay the taxes under this chapter on behalf of the operators
3 and plan managers, as set forth in this section, the registered
4 tax collection agent and the operator or plan manager shall be
5 jointly and severally liable for the taxes due under this
6 chapter, including penalties and interest as provided by law,
7 with respect to their business activities conducted directly
8 through the registered tax collection agent from the date of
9 registration until the registration is canceled as provided in
10 subsection (h).

11 (e) A tax collection agent shall be personally liable for
12 the taxes imposed by this chapter that are due and collected on
13 behalf of operators and plan managers, if taxes are collected,
14 but not reported or paid, together with penalties and interest
15 as provided by law. If the tax collection agent is an entity,
16 the personal liability under this subsection shall apply to any
17 officer, member, manager, or other person who has control or
18 supervision over amounts collected to pay the taxes or who is
19 charged with the responsibility for the filing of returns or the
20 payment of taxes.



1 (f) Except as provided in subsection (g), all returns and
2 other information provided by a registered tax collection agent,
3 including the application for registration as a tax collection
4 agent or any tax collection agreement, shall be confidential,
5 and disclosure thereof shall be prohibited as provided in
6 section 237D-13.

7 (g) A registered tax collection agent shall file periodic
8 returns in accordance with section 237D-6 and annual returns in
9 accordance with section 237D-7. Each periodic return required
10 under section 237D-6 shall be accompanied by an electronic cover
11 sheet, in a form prescribed by the department that includes the
12 following information:

13 (1) For each operator and plan manager on whose behalf the
14 tax collection agent is required to report, collect,
15 and pay over taxes due under this chapter, the
16 operator's or plan manager's name, address, and
17 transient accommodations registration identification
18 number; and

19 (2) For each transient accommodation, rented through the
20 registered tax collection agent or the website or
21 platform designated in the certificate of registration



- 1 issued pursuant to subsection (a), for which taxes are
2 being remitted pursuant to this chapter:
- 3 (A) The address of the transient accommodation;
4 (B) The number of nights that each transient
5 accommodation was rented and the rate or price at
6 which each transient accommodation was rented;
7 and
8 (C) The amount of tax being remitted pursuant to this
9 chapter and the amount of any federal form 1099
10 income that was derived from each transient
11 accommodation.

12 Upon request by the planning director or mayor of the
13 applicable county, a registered tax collection agent shall
14 disclose any of the information contained in the returns or
15 cover sheets required by this subsection to the planning
16 director or any county official designated by the mayor to
17 receive the information. Notwithstanding any law to the
18 contrary, including section 237D-13, the planning director and
19 county official designated to receive the information pursuant
20 to this subsection may examine and copy the returns and cover
21 sheets to ensure compliance with this section, state and county



1 tax laws and ordinances, and any applicable land use laws and
2 ordinances.

3 (h) The registration provided for under this section shall
4 be effective until canceled in writing.

5 A registered tax collection agent may cancel its
6 registration under this section by delivering written notice of
7 cancellation to the director and each of its operators and plan
8 managers furnishing transient accommodations in the State not
9 later than ninety days prior to the effective date of
10 cancellation.

11 The director may cancel a tax collection agent's
12 registration under this section for any cause, including but not
13 limited to any violation of this chapter or rules adopted
14 pursuant thereto, or for violation of any applicable tax
15 collection agreement, by delivering written notice of
16 cancellation to the tax collection agent not later than ninety
17 days prior to the effective date of cancellation.

18 (i) All transient accommodations brokers, prior to placing
19 an advertisement, including an online advertisement, on the
20 availability of a property for lease or rent on behalf of an
21 operator or plan manager:



- 1 (1) Shall notify the operator or plan manager that the
2 subject property is required to be in compliance with
3 applicable state land use laws and county land use
4 ordinances prior to retaining the services of the
5 transient accommodations broker;
- 6 (2) Shall require the operator or plan manager to provide
7 the transient accommodations broker with the
8 operator's or plan manager's transient accommodations
9 number and local contact information and include this
10 information in the advertisement, pursuant to section
11 237D-4;
- 12 (3) Shall require the operator or plan manager to provide
13 the transient accommodations broker with verification
14 of compliance with state land use laws and county land
15 use ordinances in the form of a written certification,
16 verification, or permit, as applicable, issued by the
17 appropriate county agency; and
- 18 (4) Shall require the operator or plan manager to provide
19 a statement to the transient accommodations broker
20 confirming compliance with all land use laws and
21 ordinances.



1 An operator or plan manager shall remove any advertisement
2 published through the transient accommodations broker, including
3 an online advertisement, for a transient accommodation located
4 in the State for which the operator or plan manager fails to
5 comply with paragraph (2), (3), or (4) or for which the operator
6 or plan manager has received written notice from a state or
7 local governmental authority that the property is not in
8 compliance with state law or county ordinance, as applicable.
9 The state or county governmental authority shall provide a copy
10 of the written notice to the transient accommodations broker.

11 (j) Nothing in this section shall be construed to preempt
12 or prohibit the authority of a unit of local government in the
13 State, including counties and any other political subdivisions
14 of the State, to adopt, monitor, and enforce local land use
15 ordinances, rules, or regulations, nor to transfer the authority
16 to monitor and enforce these ordinances, rules, or regulations
17 away from the counties."

18 SECTION 10. Chapter 481B, Hawaii Revised Statutes, is
19 amended by adding a new section to part I to be appropriately
20 designated and to read as follows:



1 "§481B- Transient accommodations brokers. (a) It
2 shall be unlawful for a transient accommodations broker to
3 engage in business with an operator or plan manager, including
4 any person or entity employed, contracted, or otherwise engaged
5 by the operator or plan manager for property management or as an
6 activity provider, that is not in compliance with all state laws
7 and county ordinances, including but not limited to laws and
8 ordinances regarding land use, taxes, and professional licenses.

9 (b) It shall be unlawful for a transient accommodations
10 broker, on behalf of an operator or plan manager, to employ,
11 contract, or otherwise engage in business with any person or
12 entity to manage any property of the operator or plan manager or
13 to act as an activity provider for transients served by the
14 operator or plan manager if the person or entity is not in
15 compliance with all state laws and county ordinances, including
16 but not limited to laws and ordinances regarding land use,
17 taxes, and professional licenses.

18 (c) Violation of this section is a class C felony.

19 (d) For the purposes of this section:

20 "Activity provider" has the same meaning as in section
21 468M-1.



1 "Operator" has the same meaning as in section 237D-1.

2 "Plan manager" has the same meaning as in section 237D-1.

3 "Transient accommodations" has the same meaning as in
4 section 237D-1.

5 "Transient accommodations broker" has the same meaning as
6 in section 237D-1."

7 SECTION 11. Section 46-1.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§46-1.5 General powers and limitation of the counties.**

10 Subject to general law, each county shall have the following
11 powers and shall be subject to the following liabilities and
12 limitations:

13 (1) Each county shall have the power to frame and adopt a
14 charter for its own self-government that shall
15 establish the county executive, administrative, and
16 legislative structure and organization, including but
17 not limited to the method of appointment or election
18 of officials, their duties, responsibilities, and
19 compensation, and the terms of their office;

20 (2) Each county shall have the power to provide for and
21 regulate the marking and lighting of all buildings and



- 1 other structures that may be obstructions or hazards
2 to aerial navigation, so far as may be necessary or
3 proper for the protection and safeguarding of life,
4 health, and property;
- 5 (3) Each county shall have the power to enforce all claims
6 on behalf of the county and approve all lawful claims
7 against the county, but shall be prohibited from
8 entering into, granting, or making in any manner any
9 contract, authorization, allowance payment, or
10 liability contrary to the provisions of any county
11 charter or general law;
- 12 (4) Each county shall have the power to make contracts and
13 to do all things necessary and proper to carry into
14 execution all powers vested in the county or any
15 county officer;
- 16 (5) Each county shall have the power to:
- 17 (A) Maintain channels, whether natural or artificial,
18 including their exits to the ocean, in suitable
19 condition to carry off storm waters;
- 20 (B) Remove from the channels, and from the shores and
21 beaches, any debris that is likely to create an



1 unsanitary condition or become a public nuisance;
2 provided that, to the extent any of the foregoing
3 work is a private responsibility, the
4 responsibility may be enforced by the county in
5 lieu of the work being done at public expense;

6 (C) Construct, acquire by gift, purchase, or by the
7 exercise of eminent domain, reconstruct, improve,
8 better, extend, and maintain projects or
9 undertakings for the control of and protection
10 against floods and flood waters, including the
11 power to drain and rehabilitate lands already
12 flooded;

13 (D) Enact zoning ordinances providing that lands
14 deemed subject to seasonable, periodic, or
15 occasional flooding shall not be used for
16 residence or other purposes in a manner as to
17 endanger the health or safety of the occupants
18 thereof, as required by the Federal Flood
19 Insurance Act of 1956 (chapter 1025, Public Law
20 1016); and



- 1 (E) Establish and charge user fees to create and
- 2 maintain any stormwater management system or
- 3 infrastructure;
- 4 (6) Each county shall have the power to exercise the power
- 5 of condemnation by eminent domain when it is in the
- 6 public interest to do so;
- 7 (7) Each county shall have the power to exercise
- 8 regulatory powers over business activity as are
- 9 assigned to them by chapter 445 or other general law;
- 10 (8) Each county shall have the power to fix the fees and
- 11 charges for all official services not otherwise
- 12 provided for;
- 13 (9) Each county shall have the power to provide by
- 14 ordinance assessments for the improvement or
- 15 maintenance of districts within the county;
- 16 (10) Except as otherwise provided, no county shall have the
- 17 power to give or loan credit to, or in aid of, any
- 18 person or corporation, directly or indirectly, except
- 19 for a public purpose;
- 20 (11) Where not within the jurisdiction of the public
- 21 utilities commission, each county shall have the power



1 to regulate by ordinance the operation of motor
2 vehicle common carriers transporting passengers within
3 the county and adopt and amend rules the county deems
4 necessary for the public convenience and necessity;

5 (12) Each county shall have the power to enact and enforce
6 ordinances necessary to prevent or summarily remove
7 public nuisances and to compel the clearing or removal
8 of any public nuisance, refuse, and uncultivated
9 undergrowth from streets, sidewalks, public places,
10 and unoccupied lots. In connection with these powers,
11 each county may impose and enforce liens upon the
12 property for the cost to the county of removing and
13 completing the necessary work where the property
14 owners fail, after reasonable notice, to comply with
15 the ordinances. The authority provided by this
16 paragraph shall not be self-executing, but shall
17 become fully effective within a county only upon the
18 enactment or adoption by the county of appropriate and
19 particular laws, ordinances, or rules defining "public
20 nuisances" with respect to each county's respective
21 circumstances. The counties shall provide the



1 property owner with the opportunity to contest the
2 summary action and to recover the owner's property;
3 (13) Each county shall have the power to enact ordinances
4 deemed necessary to protect health, life, and
5 property, and to preserve the order and security of
6 the county and its inhabitants on any subject or
7 matter not inconsistent with, or tending to defeat,
8 the intent of any state statute where the statute does
9 not disclose an express or implied intent that the
10 statute shall be exclusive or uniform throughout the
11 State;
12 (14) Each county shall have the power to:
13 (A) Make and enforce within the limits of the county
14 all necessary ordinances covering all:
15 (i) Local police matters;
16 (ii) Matters of sanitation;
17 (iii) Matters of inspection of buildings;
18 (iv) Matters of condemnation of unsafe
19 structures, plumbing, sewers, dairies, milk,
20 fish, and morgues; and



- 1 (v) Matters of the collection and disposition of
2 rubbish and garbage;
- 3 (B) Provide exemptions for homeless facilities and
4 any other program for the homeless authorized by
5 part XVII of chapter 346, for all matters under
6 this paragraph;
- 7 (C) Appoint county physicians and sanitary and other
8 inspectors as necessary to carry into effect
9 ordinances made under this paragraph, who shall
10 have the same power as given by law to agents of
11 the department of health, subject only to
12 limitations placed on them by the terms and
13 conditions of their appointments; and
- 14 (D) Fix a penalty for the violation of any ordinance,
15 which penalty may be a misdemeanor, petty
16 misdemeanor, or violation as defined by general
17 law; provided that any violation of a county
18 zoning ordinance ordained under section 46-4 may
19 additionally prescribe a penalty of a class C
20 felony;



1 (15) Each county shall have the power to provide public
2 pounds; to regulate the impounding of stray animals
3 and fowl, and their disposition; and to provide for
4 the appointment, powers, duties, and fees of animal
5 control officers;

6 (16) Each county shall have the power to purchase and
7 otherwise acquire, lease, and hold real and personal
8 property within the defined boundaries of the county
9 and to dispose of the real and personal property as
10 the interests of the inhabitants of the county may
11 require, except that:

12 (A) Any property held for school purposes may not be
13 disposed of without the consent of the
14 superintendent of education;

15 (B) No property bordering the ocean shall be sold or
16 otherwise disposed of; and

17 (C) All proceeds from the sale of park lands shall be
18 expended only for the acquisition of property for
19 park or recreational purposes;

20 (17) Each county shall have the power to provide by charter
21 for the prosecution of all offenses and to prosecute



1 for offenses against the laws of the State under the
2 authority of the attorney general of the State;

3 (18) Each county shall have the power to make
4 appropriations in amounts deemed appropriate from any
5 moneys in the treasury, for the purpose of:

6 (A) Community promotion and public celebrations;

7 (B) The entertainment of distinguished persons as may
8 from time to time visit the county;

9 (C) The entertainment of other distinguished persons,
10 as well as, public officials when deemed to be in
11 the best interest of the community; and

12 (D) The rendering of civic tribute to individuals
13 who, by virtue of their accomplishments and
14 community service, merit civic commendations,
15 recognition, or remembrance;

16 (19) Each county shall have the power to:

17 (A) Construct, purchase, take on lease, lease,
18 sublease, or in any other manner acquire, manage,
19 maintain, or dispose of buildings for county
20 purposes, sewers, sewer systems, pumping
21 stations, waterworks, including reservoirs,



- 1 wells, pipelines, and other conduits for
2 distributing water to the public, lighting
3 plants, and apparatus and appliances for lighting
4 streets and public buildings, and manage,
5 regulate, and control the same;
- 6 (B) Regulate and control the location and quality of
7 all appliances necessary to the furnishing of
8 water, heat, light, power, telephone, and
9 telecommunications service to the county;
- 10 (C) Acquire, regulate, and control any and all
11 appliances for the sprinkling and cleaning of the
12 streets and the public ways, and for flushing the
13 sewers; and
- 14 (D) Open, close, construct, or maintain county
15 highways or charge toll on county highways;
16 provided that all revenues received from a toll
17 charge shall be used for the construction or
18 maintenance of county highways;
- 19 (20) Each county shall have the power to regulate the
20 renting, subletting, and rental conditions of property
21 for places of abode by ordinance;



- 1 (21) Unless otherwise provided by law, each county shall
2 have the power to establish by ordinance the order of
3 succession of county officials in the event of a
4 military or civil disaster;
- 5 (22) Each county shall have the power to sue and be sued in
6 its corporate name;
- 7 (23) Each county shall have the power to establish and
8 maintain waterworks and sewer works; to collect rates
9 for water supplied to consumers and for the use of
10 sewers; to install water meters whenever deemed
11 expedient; provided that owners of premises having
12 vested water rights under existing laws appurtenant to
13 the premises shall not be charged for the installation
14 or use of the water meters on the premises; to take
15 over from the State existing waterworks systems,
16 including water rights, pipelines, and other
17 appurtenances belonging thereto, and sewer systems,
18 and to enlarge, develop, and improve the same;
- 19 (24) (A) Each county may impose civil fines, in addition
20 to criminal penalties, and remedies for
21 disgorgement of all profits and restitution of



1 any money, real property, or personal property
2 that was obtained through unfair or unlawful
3 business acts and practices, for any violation of
4 county ordinances or rules after a reasonable
5 notice and [~~requests~~] request to correct or cease
6 the violation [~~have~~] has been made upon the
7 violation. Any administratively imposed civil
8 fine shall not be collected until [~~after~~] either
9 an opportunity for [~~a~~]:

10 (i) A hearing under chapter 91[-]; or

11 (ii) Judicial review by the circuit court, as
12 prescribed by ordinance for specific
13 violations,

14 has been afforded. Any appeal shall be filed
15 within thirty days from the date of the final
16 written decision. These proceedings shall not be
17 stayed pending disposition of any criminal
18 proceeding for a related offense. These
19 proceedings shall not be a prerequisite for any
20 civil fine or injunctive relief ordered by the
21 circuit court [~~+~~]. Where a county seeks



injunctive relief for violations of an ordinance
related to transient vacation rental units, the
county need not show irreparable injury;

(B) Each county by ordinance may provide for the addition of any unpaid civil fines, ordered by any court of competent jurisdiction, to any taxes, fees, or charges, with the exception of fees or charges for water for residential use and sewer charges, collected by the county. Each county by ordinance may also provide for the addition of any unpaid administratively imposed civil fines, which remain due after all judicial review rights under section 91-14 are exhausted, to any taxes, fees, or charges, with the exception of water for residential use and sewer charges, collected by the county. The ordinance shall specify the administrative procedures for the addition of the unpaid civil fines to the eligible taxes, fees, or charges and may require hearings or other proceedings. After addition of the unpaid civil fines to the taxes, fees, or



1 charges, the unpaid civil fines shall not become
2 a part of any taxes, fees, or charges. The
3 county by ordinance may condition the issuance or
4 renewal of a license, approval, or permit for
5 which a fee or charge is assessed, except for
6 water for residential use and sewer charges, on
7 payment of the unpaid civil fines. Upon
8 recordation of a notice of unpaid civil fines in
9 the bureau of conveyances, the amount of the
10 civil fines, including any increase in the amount
11 of the fine [~~which~~] that the county may assess,
12 shall constitute a lien upon all real property or
13 rights to real property belonging to any person
14 liable for the unpaid civil fines. The lien in
15 favor of the county shall be subordinate to any
16 lien in favor of any person recorded or
17 registered prior to the recordation of the notice
18 of unpaid civil fines and senior to any lien
19 recorded or registered after the recordation of
20 the notice. The lien shall continue until the
21 unpaid civil fines are paid in full or until a



1 certificate of release or partial release of the
2 lien, prepared by the county at the owner's
3 expense, is recorded. The notice of unpaid civil
4 fines shall state the amount of the fine as of
5 the date of the notice and maximum permissible
6 daily increase of the fine. The county shall not
7 be required to include a social security number,
8 state general excise taxpayer identification
9 number, or federal employer identification number
10 on the notice. Recordation of the notice in the
11 bureau of conveyances shall be deemed, at [~~such~~]
12 that time, for all purposes and without any
13 further action, to procure a lien on land
14 registered in land court under chapter 501.
15 After the unpaid civil fines are added to the
16 taxes, fees, or charges as specified by county
17 ordinance, the unpaid civil fines shall be deemed
18 immediately due, owing, and delinquent and may be
19 collected in any lawful manner. The procedure
20 for collection of unpaid civil fines authorized
21 in this paragraph shall be in addition to any



1 other procedures for collection available to the
2 State and county by law or rules of the courts;
3 (C) Each county may impose civil fines upon any
4 person who places graffiti on any real or
5 personal property owned, managed, or maintained
6 by the county. The fine may be up to \$1,000 or
7 may be equal to the actual cost of having the
8 damaged property repaired or replaced. The
9 parent or guardian having custody of a minor who
10 places graffiti on any real or personal property
11 owned, managed, or maintained by the county shall
12 be jointly and severally liable with the minor
13 for any civil fines imposed hereunder. Any
14 ~~[such]~~ fine under this paragraph may be
15 administratively imposed after an opportunity for
16 a hearing under chapter 91, but ~~[such]~~ a
17 ~~[proceeding]~~ hearing shall not be a prerequisite
18 for any civil fine ordered by any court. As used
19 in this subparagraph, "graffiti" means any
20 unauthorized drawing, inscription, figure, or



1 mark of any type intentionally created by paint,
2 ink, chalk, dye, or similar substances;

3 (D) At the completion of an appeal in which the
4 county's enforcement action is affirmed and upon
5 correction of the violation if requested by the
6 violator, the case shall be reviewed by the
7 county agency that imposed the civil fines to
8 determine the appropriateness of the amount of
9 the civil fines that accrued while the appeal
10 proceedings were pending. In its review of the
11 amount of the accrued fines, the county agency
12 may consider:

- 13 (i) The nature and egregiousness of the
14 violation;
- 15 (ii) The duration of the violation;
- 16 (iii) The number of recurring and other similar
17 violations;
- 18 (iv) Any effort taken by the violator to correct
19 the violation;
- 20 (v) The degree of involvement in causing or
21 continuing the violation;



1 (vi) Reasons for any delay in the completion of
2 the appeal; and

3 (vii) Other extenuating circumstances.

4 The civil fine that is imposed by administrative
5 order after this review is completed and the
6 violation is corrected shall be subject to
7 judicial review, notwithstanding any provisions
8 for administrative review in county charters;

9 (E) After completion of a review of the amount of
10 accrued civil fine by the county agency that
11 imposed the fine, the amount of the civil fine
12 determined appropriate, including both the
13 initial civil fine and any accrued daily civil
14 fine, shall immediately become due and
15 collectible following reasonable notice to the
16 violator. If no review of the accrued civil fine
17 is requested, the amount of the civil fine, not
18 to exceed the total accrual of civil fine prior
19 to correcting the violation, shall immediately
20 become due and collectible following reasonable



1 notice to the violator, at the completion of all
2 appeal proceedings;

3 (F) If no county agency exists to conduct appeal
4 proceedings for a particular civil fine action
5 taken by the county, then one shall be
6 established by ordinance before the county shall
7 impose the civil fine;

8 (25) Any law to the contrary notwithstanding, any county
9 mayor, by executive order, may exempt donors, provider
10 agencies, homeless facilities, and any other program
11 for the homeless under part XVII of chapter 346 from
12 real property taxes, water and sewer development fees,
13 rates collected for water supplied to consumers and
14 for use of sewers, and any other county taxes,
15 charges, or fees; provided that any county may enact
16 ordinances to regulate and grant the exemptions
17 granted by this paragraph;

18 (26) Any county may establish a captive insurance company
19 pursuant to article 19, chapter 431; and

20 (27) Each county shall have the power to enact and enforce
21 ordinances regulating towing operations."



1 SECTION 12. Section 46-4, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) This section and any ordinance, rule, or regulation
4 adopted in accordance with this section shall apply to lands not
5 contained within the forest reserve boundaries as established on
6 January 31, 1957, or as subsequently amended.

7 Zoning in all counties shall be accomplished within the
8 framework of a long-range, comprehensive general plan prepared
9 or being prepared to guide the overall future development of the
10 county. Zoning shall be one of the tools available to the
11 county to put the general plan into effect in an orderly manner.
12 Zoning in the counties of Hawaii, Maui, and Kauai means the
13 establishment of districts of [~~such~~] a number, shape, and area,
14 and the adoption of regulations for each district, to carry out
15 the purposes of this section. In establishing or regulating the
16 districts, full consideration shall be given to all available
17 data as to soil classification and physical use capabilities of
18 the land to allow and encourage the most beneficial use of the
19 land consonant with good zoning practices. The zoning power
20 granted herein shall be exercised by ordinance which may relate
21 to:



- 1 (1) The areas within which agriculture, forestry,
- 2 industry, trade, and business may be conducted;
- 3 (2) The areas in which residential uses may be regulated
- 4 or prohibited;
- 5 (3) The areas bordering natural watercourses, channels,
- 6 and streams, in which trades or industries, filling or
- 7 dumping, erection of structures, and the location of
- 8 buildings may be prohibited or restricted;
- 9 (4) The areas in which particular uses may be subjected to
- 10 special restrictions;
- 11 (5) The location of buildings and structures designed for
- 12 specific uses and designation of uses for which
- 13 buildings and structures may not be used or altered;
- 14 (6) The location, height, bulk, number of stories, and
- 15 size of buildings and other structures;
- 16 (7) The location of roads, schools, and recreation areas;
- 17 (8) Building setback lines and future street lines;
- 18 (9) The density and distribution of population;
- 19 (10) The percentage of a lot that may be occupied, size of
- 20 yards, courts, and other open spaces;
- 21 (11) Minimum and maximum lot sizes; and



1 (12) Other regulations the boards or city council find
2 necessary and proper to permit and encourage the
3 orderly development of land resources within their
4 jurisdictions.

5 The council of any county shall prescribe rules,
6 regulations, and administrative procedures and provide personnel
7 it finds necessary to enforce this section and any ordinance
8 enacted in accordance with this section. The ordinances may be
9 enforced by appropriate fines [~~and~~], penalties, and remedies for
10 disgorgement of all profits and restitution of any money, real
11 property, or personal property that was obtained through unfair
12 or unlawful business acts and practices, civil or criminal, or
13 by court order at the suit of the county or the owner or owners
14 of real estate directly affected by the ordinances. In any
15 action brought under this part, the court or zoning agency, in
16 addition to any fine imposed upon the ordinance violator, shall
17 allow costs of action, including costs and fees of any nature
18 and reasonable attorney's fees, to be paid by the ordinance
19 violator.

20 An operator or plan manager who fails to remove an
21 advertisement within seven days of receiving a notice of



1 noncompliance under section 237- (i) or 237D- (i) shall be
2 considered to be in violation of this section and applicable
3 county land use ordinances and shall be subject to civil fines,
4 ranging from \$25,000 to \$100,000, to be levied by the county
5 planning director of the county where the subject property is
6 located.

7 The counties shall ordain ordinances prohibiting transient
8 accommodations brokers from engaging in business with an
9 operator or plan manager who is not in compliance with all state
10 laws and county ordinances, including but not limited to laws
11 and ordinances regarding land use, taxes, and professional
12 licenses. Violation of these ordinances shall be a class C
13 felony enforceable by the respective county prosecutor.

14 Any civil fine or penalty provided by ordinance under this
15 section may be imposed by the district court, or by the zoning
16 agency after an opportunity for a hearing pursuant to chapter
17 91. The proceeding shall not be a prerequisite for any
18 injunctive relief ordered by the circuit court.

19 Nothing in this section shall invalidate any zoning
20 ordinance or regulation adopted by any county or other agency of



1 government pursuant to the statutes in effect prior to July 1,
2 1957.

3 The powers granted herein shall be liberally construed in
4 favor of the county exercising them, and in such a manner as to
5 promote the orderly development of each county or city and
6 county in accordance with a long-range, comprehensive general
7 plan to ensure the greatest benefit for the State as a whole.
8 This section shall not be construed to limit or repeal any
9 powers of any county to achieve these ends through zoning and
10 building regulations, except insofar as forest and water reserve
11 zones are concerned and as provided in subsections (c) and (d).

12 Neither this section nor any ordinance enacted pursuant to
13 this section shall prohibit the continued lawful use of any
14 building or premises for any trade, industrial, residential,
15 agricultural, or other purpose for which the building or
16 premises is used at the time this section or the ordinance takes
17 effect; provided that a zoning ordinance may provide for
18 elimination of nonconforming uses as the uses are discontinued,
19 or for the amortization or phasing out of nonconforming uses or
20 signs over a reasonable period of time in commercial,
21 industrial, resort, and apartment zoned areas only. A zoning



1 ordinance may provide for the amortization or phasing out of
2 conforming or nonconforming single-family transient vacation
3 rental units over a reasonable period of time in an area of any
4 zoning classification. In no event shall [~~such~~] the
5 amortization or phasing out of nonconforming uses apply to any
6 existing building or premises used for residential (single-
7 family or duplex) or agricultural uses[~~-~~] other than transient
8 vacation rental units, as provided in this section. Nothing in
9 this section shall affect or impair the powers and duties of the
10 director of transportation as set forth in chapter 262."

11 SECTION 13. By January 1, 2019, the director of taxation
12 shall make available to transient accommodations brokers a form
13 of application for registration as a tax collection agent under
14 the new section of chapter 237, Hawaii Revised Statutes, added
15 by section 8 of this Act, and under the new section of chapter
16 237D, Hawaii Revised Statutes, added by section 9 of this Act.

17 SECTION 14. Upon the establishment by a county of a
18 process for providing verification of compliance by an operator
19 or plan manager with that county's land use ordinances, the
20 director of taxation shall transfer to that county per
21 cent of the transient accommodations tax and general excise tax



1 revenues collected pursuant to this part in that county for that
2 fiscal year.

3 PART III

4 SECTION 15. Chapter 481B, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§481B- Booking services. (a) It shall be unlawful
8 for a hosting platform to provide, and collect a fee for,
9 booking services in connection with transient vacation rentals
10 located in the State if those transient vacation rentals are not
11 lawfully certified, registered, or permitted as a transient
12 vacation rental under applicable county ordinance at the time
13 the transient vacation rental is rented.

14 (b) The appropriate officer or agency charged with the
15 administration of county zoning laws shall enforce this section
16 within each county.

17 (c) Violation of this section shall be subject to
18 _____.

19 (d) As used in this section:

20 "Booking service" means any reservation or payment service
21 provided by a person or entity that facilitates a transient



1 vacation rental transaction between an operator and a
2 prospective renter, and for which the person or entity collects
3 or receives, directly or indirectly through an agent or
4 intermediary, a fee in connection with the reservation or
5 payment services provided for the transient vacation rental
6 transaction.

7 "County" means the city and county of Honolulu and the
8 counties of Hawaii, Kauai, and Maui; provided that the county of
9 Maui shall include the county of Kalawao for the purposes of
10 this section.

11 "Hosting platform" means a person or entity that
12 participates in the transient vacation rental business by
13 providing, and collecting or receiving a fee for, booking
14 services through which an operator may offer a transient
15 vacation rental unit. Hosting platforms usually, though not
16 necessarily, provide booking services through an online platform
17 that allows an operator to advertise the transient vacation
18 rental unit through a website provided by the hosting platform
19 and the hosting platform conducts a transaction by which
20 potential renters arrange use and payment, whether the renter
21 pays rent directly to the operator or to the hosting platform.



Report Title:

Taxation; Transient Accommodations Tax; Amnesty; Vacation Rentals; Brokers; Tax Collection Agents; General Excise Tax

Description:

Establishes a 1-time amnesty program for certain delinquent transient accommodations and general excise tax obligations. Allows transient accommodations brokers to register as a tax collection agent for its operators and plan managers. Requires registered tax collection agents to inquire with their operators and plan managers whether the transient accommodation is in compliance with all state and county land use and tax laws. Requires the operator or plan manager to provide verification of compliance with state and county land use laws. Requires an operator or plan manager to remove a transient accommodation advertisement upon notice that the property is not in compliance with state law or county ordinance. Makes it unlawful for transient accommodations brokers to engage in business with operators of plan managers that are not in compliance with all state laws and county ordinances. Authorizes counties to disgorge profits obtained through unfair or unlawful business practices. Authorizes counties to adopt ordinances to amortize or phase out transient vacation rental units. Allocates an unspecified percentage of GET and TAT tax revenues to the counties, contingent upon establishment of a process to provide verification of compliance by an operator or plan manager with county land use laws. Makes it unlawful for a hosting platform to collect a fee for booking services regarding transient vacation rentals that are not lawfully certified, registered, or permitted under applicable county ordinance. (Proposed SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

