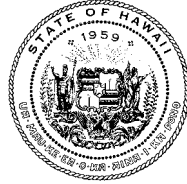


NEIL ABERCROMBIE  
GOVERNOR

SHAN TSUTSUI  
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To: The Honorable David Y. Ige, Chair  
and Members of the Senate Committee on Ways and Means

Date: Friday, February 22, 2013  
Time: 9:00 A.M.  
Place: Conference Room 211, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: S.B. 500, S.D. 1, Relating to Transient Accommodations

The Department of Taxation (Department) supports the intent of S.B. 500, S.D. 1, and offers the following information and comments for your consideration.

S.B. 500 S.D.1 amends Act 326, Session Laws of Hawaii 2012 by clarifying what information must be provided to the Department and by modifying the penalties for non-compliance.

First, the Department recommends the bill be amended to contain further guidance on who may act as a designated local contact. The Department has received numerous inquiries about whether a friend or relative may act as the contact, or whether the contact must be a licensed real estate professional or must meet some other criteria.

Second, the Department strongly supports changing the penalty for failure to report information under this Act from a criminal penalty to a civil fine, and clarifying that the penalty may only be imposed once per year.

Third, the Department strongly supports requirement of subsection (c) that the local contact's name, address and contact information be submitted to the Department. Under the current subsection (b), an operator is required to submit the local contact's name, address and contact information as well as "relevant information" to the condo or homeowner's association. However, under subsection (c) only the relevant information and not the local contact's information must be submitted to the Department.

Fourth, the Department suggests a technical correction at page 4, line 2: the words "be subject to" should be deleted.

Thank you for the opportunity to provide comments.



February 21, 2013

The Honorable David Y. Ige, Chair  
Senate Ways and Means Committee  
State Capitol, Room 211  
Honolulu, Hawaii 96813

RE: S.B. 500, SD1, Relating to Transient Accommodations

Aloha Chair Ige, Vice Chair Kidani, and Members of the Committee:

I am Dan Monck, here to testify on behalf of the Hawai'i Association of Vacation Rental Managers ("HAVRM").

**HAVRM submits comments** on H.B.500, SD1.

HAVRM supports the intent of S.B. 500, SD1 to “clean” up several aspects of ACT 326, Session Laws of Hawaii 2012, and would like to offer improvements to S.B. 500, SD1 for the committee’s consideration.

1) While we agree that the penalty should be a civil penalty as advocated by this proposed bill, the reduction of the penalty to \$1000 is too low and certainly inappropriate.

The operators of the Transient Accommodations that Act 326 addresses on average achieve revenues on the order of \$40,000 a year, and which can reach over \$100,000 a year. A fine of only \$1000 is too small, when compared to the magnitude of these revenues, to secure consumer protection and public safety by insuring a Local Contact exists for each Transient Accommodation, and that this information is properly provided to the appropriate AOA. Furthermore, this Local Contact information provides the Department of Finance an important avenue to pursue significant tax collection for our State.

We would suggest that the fine be a civil fine of \$10,000. This value is more appropriate than the \$1000 presently suggested within S.B. 500, SD1, when the revenue values being generated by these Transient Accommodation operators is considered.

In addition to the suggested change to S.B. 500, SD1 above, there are two important changes that need to be made to Act 326's language that should be corrected within S.B. 500, SD1. The first change removes conflict with the Real Estate Statute, HRS 467, and as such is very important. The second change advocates language that provides consistency with Act 326's

stated intent as expressed in Act 326 Section 1 to provide clarity of purpose.

2) Act 326 Section 2(h) reads: **"Nothing in this section shall be deemed to create an employer-employee relationship between an operator and its local contact."**

The reason a "Local Contact" in Act 326 can act on behalf of an owner of rental real estate is due to the exception clause of Real Estate Statute, 467-2 permitting an owner's "Custodian or Caretaker" to do so. The term "Custodian or Caretaker" is a defined term within the Real Estate Statute, 467-1, to specifically identify how this exception be allowed in 467-2. A key component of the definition of Custodian or Caretaker in the Real Estate Code, 467-1, is that *"Custodian or caretaker" means any individual, who for compensation or valuable consideration, is employed as an employee by a single owner and has the responsibility to manage or care for that real property left in the individual's trust; provided that the term "custodian" or "caretaker" shall not include any individual who leases or offers to lease, or rents or offers to rent, any real estate for more than a single owner.*

**Act 326 Section 2(h) as demonstrated above is presently in direct conflict with the Real Estate Statute's exception clause that permits the "Local Contact" to act on behalf of the rental operator in the first place.** Act 326 2(h) should be corrected to read **"The Local Contact is employed as an employee of the operator,** which is the same employer-employee language used within 467-1 in the Custodian or Caretaker definition to correct this Act's defect.

3) Act 326 2(h) also reads: "Local contact" means an individual or company contracted by the operator of the transient accommodation to provide services required by this section. Per the present language of ACT 326, the only service required of the "section" is to be located on the island where the transient accommodation is being conducted. There is no requirement to act on behalf of the rental operator to provide consumer protections as explained in Act 326 Section 1, and which is a requirement of HRS 521-43(f).

The modified clause below clarifies the, language to be consistent with the Act 326's stated intent as expressed in Act 326 Section 1.

"Local contact" means an individual or company contracted in writing by the operator of the transient accommodation to provide services required by this section, and with all applicable laws and rules including chapter 467 and 521, Hawaii Revised Statutes."

Similarly, Act 326 2(e) ends stating "and shall meet all other requirements under subsection (a). Subsection (a) only requires the Local Contact to be located on-island where the transient accommodation is taking place. Act 326 2(e) ending should state "and shall meet all other requirements under subsection (a), and the local contact shall comply with all applicable laws and rules including chapter 467 and 521, Hawaii Revised Statutes." In this way, the intended requirements of the Local Contact are clear, and the language change is consistent with Act 326 Section 1.

Thank you for the opportunity to provide our comments.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [SherlBlod@aol.com](mailto:SherlBlod@aol.com)  
**Subject:** Submitted testimony for SB500 on Feb 22, 2013 09:00AM  
**Date:** Thursday, February 21, 2013 9:08:14 AM

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SB500

Submitted on: 2/21/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Gladys Sherley Blodgett	Individual	Comments Only	No

Comments: How can owners know about the rules if someone isn't required to tell them. A lot of owners reside on the mainland and are not privileged to news available on island. Suggest a mandatory requirement in the law for either the Association or the Managing Agent to no less than annually notify owners of the requirement of this law. I agree the burden should be on the individual owners/operators of the vacation rental; but unless they are informed, they are unaware.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)