

Honolulu, Hawaii

MAR 24 2017

RE: H.B. No. 1471
H.D. 3
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
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. 1471, H.D. 3, entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require large transient accommodations brokers and permit all transient accommodations brokers to register as tax collection agents to collect and remit general excise and transient accommodations taxes on behalf of operators and plan managers using their services;
- (2) Ensure that the subject properties are in compliance with applicable land use laws;
- (3) Create a definition of "large transient accommodations broker"; and
- (4) Allocate \$4,000,000 of transient accommodations tax revenue to the counties for compliance and enforcement of county ordinances regulating transient vacation rentals.



Your Committees received testimony in support of this measure from the Maui Chamber of Commerce, AirBNB, Hawaii Appleseed Center for Law and Justice, and fifteen individuals. Your Committees received testimony in opposition to this measure from the County of Kauai Planning Department; County of Kauai Office of the Prosecuting Attorney; Kailua Neighborhood Board; National Federation of Filipino American Association; Filipino American Citizens League; Rental by Owner Awareness Association; Nursing Advocates & Mentors, Inc.; Hawaii Alliance for Progressive Action; Young Progressives Demanding Action; Outrigger Enterprises Group; and eighty-five individuals. Your Committees received comments on this measure from the Department of the Attorney General, Department of Taxation, Maui Hotel and Lodging Association, Land Use Research Foundation of Hawaii, Tax Foundation of Hawaii, Save Oahu's Neighborhoods, and three individuals.

Prior to the hearing on this measure, your Committees posted and made available for public review a proposed S.D. 1, which amends this measure by:

- (1) Deleting its contents and inserting the contents of S.B. No. 1281, Regular Session of 2017, which, among other things:
 - (A) Allows transient accommodations brokers to register as general excise and transient accommodations tax collection agents on behalf of their operators and plan managers;
 - (B) Requires registered transient accommodations broker tax collection agents' operators and plan managers to obtain general excise tax licensure and transient accommodations tax registration;
 - (C) Requires all registered transient accommodations broker tax collection agents to inquire and ensure that the transient accommodation is in compliance with all pertinent state and county land use laws;
 - (D) Requires operators and plan managers to provide verification of compliance with county land use laws in the form of a written certification,



verification, or permit issued by the appropriate county agency; and

- (E) Makes the measure effective upon approval and applicable to taxable years beginning after December 31, 2017;
- (2) Requiring that transient accommodations broker tax collections agents file periodic returns in accordance with sections 237D-6, Hawaii Revised Statutes, and annual returns in accordance with section 237D-7, Hawaii Revised Statutes, and that the returns shall include reporting information, including but not limited to the name, address, and transient accommodations tax number of each operator and plan manager;
- (3) Requiring a transient accommodations broker to remove advertisements for transient accommodations located in the State for which the operator or plan manager fails to comply with requirements or for which the transient accommodations broker has received written notice that the operator or plan manager has failed to comply with applicable land use, zoning, or tax requirements; and
- (4) Clarifying that the measure is not intended to preempt or otherwise limit the authority of counties to adopt, monitor, and enforce local land use regulations, nor is the measure intended to transfer the authority to monitor and enforce such regulations away from the counties.

Your Committees received testimony in support of the proposed S.D. 1 from the City and County of Honolulu Department of Planning and Permitting, Hawaii Lodging and Tourism Association, Maui Hotel and Lodging Association, Outrigger Enterprises Group, and two individuals. Your Committees received testimony in opposition to the proposed S.D. 1 from the Rental by Owner Awareness Association, Aina Haina Community Association, Internet Association, and ILWU Local 142. Your Committees received comments on the proposed S.D. 1 from the Department of the Attorney General, Department of Taxation, Office of Hawaiian Affairs, Hawaii Tourism Authority, AirBNB, American Hotel and



Lodging Association, Keep it Kailua, Unite Here! Local 5 Hawaii, Kyoya Management Company, and two individuals.

Your Committees find that allowing internet platforms to collect and remit general excise and transient accommodations taxes for its users will generate millions of dollars in tax revenue for the State of Hawaii. Your Committees further find that this measure will also ensure that all operators and plan managers pay their share of taxes while also creating standards to ensure compliance with land use ordinances and regulations.

Your Committees have amended this measure by adopting the proposed S.D. 1 and further amending this measure by:

- (1) Requiring that each periodic tax return be accompanied by an electronic cover sheet, in a form prescribed by the Department of Taxation, that includes the following information:
 - (A) For each operator and plan manager on whose behalf the transient accommodations broker tax collection agent is required to report, collect, and pay over taxes, the operator's or plan manager's name, address, and license identification number; and
 - (B) For each transient accommodation rented through the registered transient accommodations broker tax collection agent or the website or platform designated in the certificate of registration and for which taxes are being remitted:
 - (i) The address of the transient accommodation;
 - (ii) The number of nights for which each transient accommodation was rented and the rate or price at which each transient accommodation was rented; and
 - (iii) The amount of tax being remitted pursuant to this chapter and the amount of any federal form 1099 income that was derived from each transient accommodation;



- (2) Providing that the Director of Taxation and county official designated by the mayor to receive information contained in returns shall be deemed to be persons with a material interest in the return and return information and may examine the returns and cover sheet to ensure compliance with this measure, state and local tax laws and ordinances, and any applicable land use laws and ordinances;
- (3) Requiring the operator or plan manager to provide a statement confirming compliance with all land use laws to the transient accommodations broker tax collection agent;
- (4) Clarifying that nothing in sections 2 and 3 shall be construed to preempt or prohibit the authority of a unit of local government in the State, including counties and any other political subdivisions of the State, to adopt, monitor, and enforce local land use regulations, nor to transfer the authority to monitor and enforce such regulations away from the counties;
- (5) Changing the licensure reference for purposes of the general excise tax in section 2 from "separate certificates of registration" to "separate licenses" to match the statutory language of the general excise tax;
- (6) Correcting references to general excise tax returns in section 2 to correspond to the general excise tax statute;
- (7) Clarifying that all obligations, rights, and responsibilities imposed shall apply jointly to operators and plan managers and to transient accommodations broker tax collection agents under this measure;
- (8) Inserting language to require the Director of Taxation to transfer to any county, upon establishment of a process for providing verification of compliance by an operator or plan manager with that county's land use laws, an unspecified percentage of transient accommodations and general excise taxes collected;



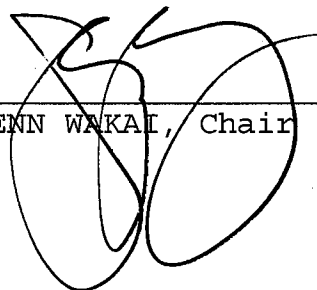
- (9) Inserting an effective date of May 22, 2050, to encourage further discussion; and
- (10) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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. 1471, H.D. 3, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 1471, H.D. 3, S.D. 1, and be referred to your Committees on Commerce, Consumer Protection, and Health and 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



