

Honolulu, Hawaii

APR 07 2017

RE: H.B. No. 1471
H.D. 3
S.D. 2

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committees on Commerce, Consumer Protection, and Health and Ways and Means, to which was referred H.B. No. 1471, H.D. 3, S.D. 1, 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) Allow a transient accommodations broker to register with the Department of Taxation as a tax collection agent on behalf of its operators and plan managers;
- (2) Impose registration, filing, and compliance requirements on operators and plan managers for purposes of collecting general excise tax and transient accommodations tax and compliance with all relevant state and county land use laws; and
- (3) Require the Director of Taxation to transfer to the counties an unspecified percentage of the transient accommodations tax and general excise tax collected, upon the counties' establishment of a process for providing verification of compliance by an operator or plan manager with the applicable county land use laws.



Your Committees received testimony in support of this measure from the Department of Planning and Permitting, City and County of Honolulu; Hawai'i Appleseed Center for Law and Economic Justice; Maui Chamber of Commerce; Hawai'i Lodging & Tourism Association; American Hotel and Lodging Association; UNITE HERE!, Local 5 Hawaii; U.S. Green Building Council, Hawai'i Chapter; Marriott Hotels & Resorts; Hilton Hawaii; Marriott Vacations Worldwide; Trump International Hotel, Waikiki; Airbnb; and three individuals. Your Committees received testimony in opposition to this measure from the Coalition for Equal Taxation; International Longshore and Warehouse Union, Local 142; Rental By Owner Awareness Association; Internet Association; Condominium Rentals Hawaii; Expedia Inc.; and twenty individuals. Your Committees received comments on this measure from the Department of the Attorney General; Department of Budget and Finance; Department of Taxation; Office of Hawaiian Affairs; Hawai'i Tourism Authority; Planning Department, County of Maui; 'Āina Haina Community Association; Tax Foundation of Hawaii; Land Use Research Foundation of Hawaii; Save O'ahu's Neighborhoods; and six individuals.

Your Committees find that permitting transient accommodations brokers to act as tax collection agents, similar to how multi-level marketing organizations may act as tax collection agents on behalf of their direct sellers, eases the burden of reporting and remitting taxes for taxpayers and promotes efficient tax collection by lessening the burden of processing, auditing, and collecting from individual taxpayers.

Your Committees further find that with the popularity of transient accommodations websites, the number of transient vacation rental operators in the State has ballooned. However, according to testimony received by the City and County of Honolulu, Department of Planning and Permitting, an overwhelming majority of units advertised on online sites are believed to be operating without a valid permit. Furthermore, the Department of Planning and Permitting has indicated that it has found it increasingly difficult to keep up with enforcement efforts related to illegal vacation rentals. Accordingly, this measure will assist in enforcement efforts by requiring operators and plan managers to verify compliance with state and county land use and tax laws and providing a percentage of collected general excise and transient accommodation taxes to any county that establishes a process of providing verification of compliance by an operator or



plan manager. Your Committees note that the City and County of Honolulu has developed a new platform, Lōkahi, which will make tracking usage of transient vacation rentals much easier. Additionally, the information related to transient vacation rentals required by this measure to be provided to the Director of Taxation will also help the counties in their enforcement efforts by contributing to the preponderance of evidence standard that the counties must meet when proving that certain illegal property use is ongoing.

Your Committees also note that the Departments of the Attorney General and Taxation have offered suggested amendments to help clarify certain aspects of this measure. In particular, your Committees understand the concerns raised in testimony from the Attorney General that certain provisions in this measure may be subject to challenge as being preempted by the federal Communications Decency Act. Amendments to this measure are therefore needed to address these concerns.

Your Committees have amended this measure by:

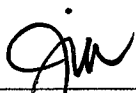
- (1) Clarifying that the transient accommodations broker tax collection agent (agent) is required to collect, report, and pay the general excise and transient accommodations taxes on behalf of operators and plan managers;
- (2) Clarifying that the agent and the operator or plan manager are jointly and severally liable for the general excise and transient accommodations taxes due by the operator or plan manager, if the agent fails to report or pay taxes on behalf of the operator or plan manager;
- (3) Clarifying the persons who shall be personally liable for general excise and transient accommodations taxes when the agent is an entity;
- (4) Clarifying that the agent is required to disclose certain information contained in required returns or cover sheets when the proper request is made by the Director of Taxation or Mayor of the applicable county and ensuring that the Director of Taxation and county official designated by the Mayor are able to examine and copy the tax returns and cover sheets;



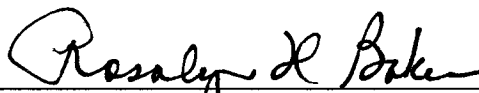
- (5) Clarifying that all agents must inquire with their operators and plan managers to determine whether the transient accommodation is in compliance with all pertinent state and county land use and tax laws;
- (6) Clarifying that operators or plan managers are required to provide verification of compliance with state and county land use laws in the form of a written certification, verification, or permit, as may be applicable, issued by the appropriate county agency;
- (7) Removing language that would have required a transient accommodations broker to remove any advertisement for a transient accommodation where an operator or plan manager has failed to comply with applicable land use, zoning, or tax requirements; and
- (8) 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 Commerce, Consumer Protection, and Health and Ways and Means that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 1471, H.D. 3, S.D. 1, as amended herein, and recommend that it pass Third Reading in the form attached hereto as H.B. No. 1471, H.D. 3, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committees on Commerce,
Consumer Protection, and Health
and Ways and Means,



JILL N. TOKUDA, Chair



ROSALYN H. BAKER, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

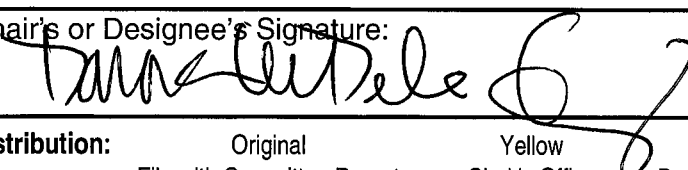
Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:*	Committee Referral:	Date:		
HB1471, HD3, SD1	ETT/PSM, CPH/WAM	4/4/17		
<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
BAKER, Rosalyn H. (C)	/			
NISHIHARA, Clarence K. (VC)	/			
CHANG, Stanley	/			
ESPERO, Will	/			
IHARA, Jr., Les	/			
KIDANI, Michelle N.				/
RUDERMAN, Russell E.	/			
TOTAL	6			1
Recommendation:				
<input checked="" type="checkbox"/> Adopted		<input type="checkbox"/> Not Adopted		
Chair's or Designee's Signature:				
<i>Clarence K. Nishihara</i>				
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 Ways and Means
WAM

Bill / Resolution No.:*	Committee Referral:	Date:
HB 1471, HD3, SD1	ETT/PSM, LPH/WAM	4/4/17
<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
TOKUDA, Jill N. (C)	/	
DELA CRUZ, Donovan M. (VC)	/	
ENGLISH, J. Kalani	/	
GALUTERIA, Brickwood	/	
HARIMOTO, Breene	/	
INOUYE, Lorraine R.	/	
KAHELE, Kaiali'i	/	
RIVIERE, Gil	/	
SHIMABUKURO, Maile S.L.	/	
TANIGUCHI, Brian T.	/	
WAKAI, Glenn		/
TOTAL	10	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