

STAND. COM. REP. NO.

2164

Honolulu, Hawaii

FEB 09 2018

RE: S.B. No. 2963
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 Ways and Means and Economic Development, Tourism, and Technology, to which was referred S.B. No. 2963 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 strengthen county enforcement of laws and ordinances relating to transient accommodations.

More specifically, this measure:

- (1) Provides that each county shall be eligible to receive \$1,000,000 from the State for the purpose of enforcing all applicable laws and ordinances relating to transient accommodations; provided that no funds shall be released to a county until it has satisfactorily complied with certain conditions; and
- (2) Appropriates funds from transient accommodations revenues to fund the initiative described in paragraph (1).

Your Committees received testimony in support of this measure from the Chair of the Kauai County Council; a member of the Hawaii County Council; the County of Hawaii Planning Department; American



Association of University Women, Hawaii; Hawaiian Civic Club of Honolulu; and seven individuals.

Your Committees received testimony in opposition to this measure from Choice Capital Management, LLC; the Coalition for Equal Taxation; Pedro Point Surf Club; Rental by Owner Awareness Association; and ninety individuals.

Your Committees received comments on this measure from the Tax Foundation of Hawaii.

For purposes of a public hearing, your Committees circulated a proposed S.D. 1 (Proposed Draft) of the measure and notified the public that your Committees would be accepting testimony on the Proposed Draft that amends the measure by deleting the existing provisions and replaces its contents with provisions to improve the monitoring, enforcement, and collection of the transient accommodations tax and general excise tax, and compliance with state and county land use laws.

More specifically, the Proposed Draft:

- (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 registered tax collection agents to inquire with their operators and plan managers whether the respective transient accommodation is in compliance with all state and county 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 with state law or county ordinance;



- (6) Makes it unlawful, and a class C felony, 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 constitute 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; provided that violation of these ordinances shall constitute a class C felony;
- (12) Requires the Director of Taxation to make available a form for transient accommodations brokers to apply for registration as a tax collection agent by January 1, 2019;
- (13) Allocates an unspecified percentage of general excise tax and transient accommodations 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; and
- (14) 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.

Your Committees received testimony in support of the Proposed Draft from the Office of the Governor; Department of Business, Economic Development, and Tourism; Department of Commerce and Consumer Affairs; Department of Taxation; Office of Hawaiian Affairs; the Mayor of the City and County of Honolulu; Department of Planning and Permitting of the City and County of Honolulu; two members of the Hawaii County Council; a member of the Kauai County Council; County of Kauai Office of the Prosecuting Attorney; County of Kauai Planning Department; a member of the Maui County Council; Aina Haina Community Association; American Hotel and Lodging Association; Hawaii Lodging and Tourism Association; Hilton Hawaii; Marriott Resorts Hawaii; Maui Hotel and Lodging Association; UNITE HERE Local 5; Vistana Signature Experiences; Waikiki Resort Hotel; and forty-six individuals.

Your Committees received testimony in opposition to the Proposed Draft from Expedia, Inc.; Hawaii Association of REALTORS; Hawaii Vacation Rental Owners Association; and ten individuals.

Your Committees received comments on the Proposed Draft from the Hawaii Tourism Authority; Airbnb; Hawaii Association of REALTORS; Kobayashi, Sugita, and Goda, on behalf of Airbnb; and the Tax Foundation of Hawaii.

The Proposed Draft of this measure is intended to ensure that the business of transient accommodations in the State of Hawaii meets certain requirements, both at the county and statewide levels, without preempting the counties' land use ordinance, zoning, and enforcement authority.

Your Committees acknowledge that, under the federal Communications Decency Act, no provider of an interactive computer service shall be treated as the publisher or speaker of information provided by another and no liability may be imposed under state law that is inconsistent with this prohibition. Your Committees believe the Proposed Draft places liability on the hosting platforms and operators or plan managers for their own conduct.



Your Committees also acknowledge that, under the federal Stored Communications Act, a governmental entity may not compel a person who is deemed to be a service that provides users the ability to send or receive wire or electronic communications and/or that provides to the public computer storage or processing services by means of an electronic communications system to provide stored wire or electronic communications and records in the absence of a subpoena, warrant, court order, or authorized consent. Therefore, the Proposed Draft provides that transient accommodations brokers obtain the prior written consent of their operators and plan managers to disclose all information required in chapters 237 and 237D, Hawaii Revised Statutes.

This measure is not intended to violate any federal laws.

The Departments of Business, Economic Development, and Tourism, Budget and Finance, and Taxation have provided your Committees with a conservative estimate of revenues that could be raised and project that measures similar to the Proposed Draft of this measure could raise a total of \$67,300,000 annually.

Your Committees have amended this measure by adopting the Proposed Draft and further amending the Proposed Draft by:

- (1) Clarifying that the tax amnesty program is only available to taxpayers who are subject to both the transient accommodations tax and the general excise tax;
- (2) Deleting requirements that the Director of Taxation adopt rules under chapter 91, Hawaii Revised Statutes, to administer the tax amnesty program;
- (3) Requiring transient accommodations brokers who wish to register as tax collection agents to agree in writing that continuing to collect fees for booking services in connection with a transient vacation rental, seven days after receiving written notice from a state or county governmental authority that the subject property is not in compliance with state law or county ordinance, would constitute a violation of their tax collection agreement;



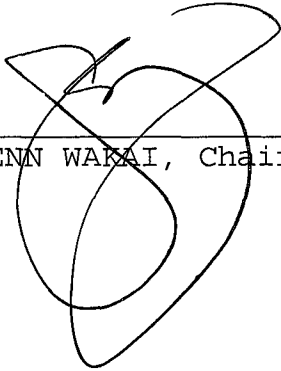
- (4) Reducing the violation of the statute prohibiting transient accommodations brokers from engaging in business with operators or plan managers that are not in compliance with all state laws and county ordinances from a class C felony to a misdemeanor with a minimum fine of \$25,000;
- (5) Replacing the provision making the violation of a county zoning ordinance a class C felony with a provision imposing a minimum civil penalty of \$25,000 for violation of a county transient accommodations ordinance;
- (6) Amending the penalty for operators or plan managers who fail to remove an advertisement for a noncompliant transient accommodation to a minimum \$25,000 fine;
- (7) Amending the provisions that require the counties to adopt ordinances to prohibit transient accommodations brokers from engaging in business with operators or plan managers who are not in compliance with all state laws and county ordinances by removing the requirement that the penalty for violating such an ordinance be a class C felony;
- (8) Deleting the date by which the Director of Taxation must make a form available for transient accommodations brokers to apply for registration as a tax collection agent;
- (9) 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;
- (10) Clarifying that violation of the statute prohibiting a hosting platform from collecting a fee for booking services regarding transient vacation rentals that are not lawfully certified, registered, or permitted under applicable county ordinance shall be a misdemeanor subject to a minimum fine of \$25,000; and



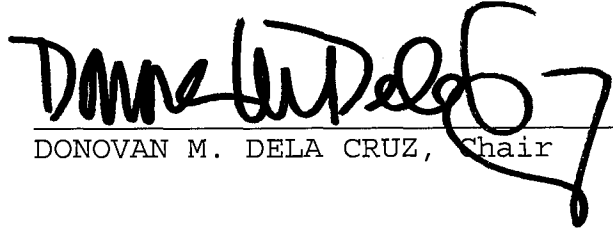
- (11) Making technical nonsubstantive amendments for the purposes of consistency, clarity, and style.

As affirmed by the records of votes of the members of your Committees on Ways and Means and Economic Development, Tourism, and Technology that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2963, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2963, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on behalf of the members of the Committees on Ways and Means and Economic Development, Tourism, and Technology,



GLENN WAKAI, Chair

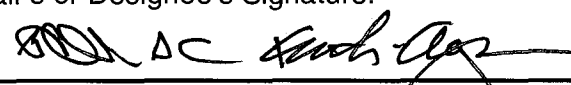


DONOVAN M. DELA CRUZ, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i


Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:* SB2963	Committee Referral: WAM/ETT	Date: 2/5/18		
<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
DELA CRUZ, Donovan M. (C)	X			
KEITH-AGARAN, Gilbert S.C. (VC)	X			
ENGLISH, J. Kalani	X			
GALUTERIA, Brickwood	X			
HARIMOTO, Breene	X			
INOUYE, Lorraine R.				X
KAHELE, Kaiali'i	X			
KIDANI, Michelle N.	X			
RIVIERE, Gil	X			
SHIMABUKURO, Maile S.L.	X			
WAKAI, Glenn	X			
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

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Members	Aye	Aye (WR)	Nay	Excused
WAKAI, Glenn (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
BAKER, Rosalyn H.	✓			
GALUTERIA, Brickwood	✓			
THIELEN, Laura H.	✓			
TOTAL	5	0	0	0
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				

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