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COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY  
Senator Glenn Wakai, Chair  
Senator Brian T. Taniguchi, Vice Chair

**S.C.R. No. 72, Requesting the Auditor to Conduct a Management Audit of the Hawai'i  
Tourism Authority**

Hearing: Friday, March 24, 2017, 2:30 p.m.

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The Office of the Auditor has **no position** regarding S.C.R. No. 72, which requests the Auditor to conduct a management audit of the Hawai'i Tourism Authority ("HTA"). **However, we note that we will be auditing HTA in 2018.**

Our most recent audit of HTA was conducted in 2013<sup>1</sup>, and we issued a report in May 2016, following up on the recommendations that were made in the 2013 audit.<sup>2</sup> Every five years, we are required to conduct a management and financial audit of HTA's major contracts and agreements.<sup>3</sup> Pursuant to that statutory requirement, we will be initiating an audit of HTA in 2018 and expect to submit our audit report to the legislature in December 2018. As part of that audit, we also will continue following up on the recommendations that HTA either had not addressed or had not completely addressed.

We suggest the committee consider our scheduled audit of HTA in 2018 when determining whether to advance the audit requested by S.C.R. No. 72.

If the committee advances the resolution, we request that the scope of the management audit be more clearly and narrowly defined. The audit as currently described in S.C.R. No. 72 is broad and likely will require us to narrow the audit's scope, which may result in a report that does not review the specific area or function that the legislature wants us to audit. If there are specific issues related to HTA that the legislature wants us to audit, we strongly recommend that the legislature define in the measure, as specifically as practicable, the scope of the audit request.

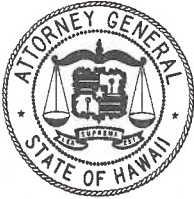
Thank you for considering our testimony related to S.C.R. No. 72.

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<sup>1</sup> Report No. 13-09, *Audit of Major Contracts and Agreements of the Hawai'i Tourism Authority* (December 2013). The report may be accessed through our website at <http://files.hawaii.gov/auditor/Reports/2013/13-09.pdf>.

<sup>2</sup> Report No. 16-05, *New HTA Management Continues to Improve Plans, Contract Oversight, and Reporting: Follow-Up on Recommendations Made in Report No. 13-09, Audit of Major Contracts and Agreements of the Hawai'i Tourism Authority* (May 2016).

<sup>3</sup> Section 23-13, Hawai'i Revised Statutes.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2017**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1471, H.D. 3, PROPOSED S.D. 1, RELATING TO TAXATION.

**BEFORE THE:**

SENATE COMMITTEES ON  
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY AND ON  
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

**DATE:** Wednesday, March 22, 2017      **TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 414

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Mary Bahng Yokota, Deputy Attorney General

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Chairs Wakai and Nishihara and Members of the Committees:

We submitted written testimony on House Draft 3 of the bill yesterday but subsequently learned that the proposed Senate Draft 1 was posted on the legislative website. The proposed Senate Draft 1 obviates many of the concerns raised in our written testimony on House Draft 3 of the bill. The Department of the Attorney General still appreciates the intent of this bill and provides comments on the proposed Senate Draft 1 as follows:

This bill provides that the Director of Taxation may permit transient accommodations brokers to register as tax collection agents on behalf of all of their operators and plan managers for general excise tax and transient accommodations tax purposes.

1. Section 237-9, Hawaii Revised Statutes (HRS), provides that taxpayers subject to general excise tax are required to apply for and obtain a "license." Operators and plan managers are required to "register" with the Director of Taxation the name and address of each place of business in the State subject to the transient accommodations tax. Section 237D-4, HRS. The bill provides that the tax collection agent shall be issued separate "certificates of registration" with respect to general excise taxes payable on behalf of its operators and plan managers in its capacity as a registered tax collection agent and, if applicable, with respect to general excise taxes payable for its

own business activities. Page 3, line 19, through page 4, line 4. If the reference to “certificates of registration” was inadvertent, we recommend that the reference on page 3, line 20, be amended to “licenses.”

2. Page 4, lines 4-7, refers to filing statutes for transient accommodations tax when it is addressing general excise tax. If this was inadvertent, we recommend that this provision of the bill be amended to reflect the filing statutes for general excise tax. For example, page 4, lines 4-7, may be amended to read as follows:

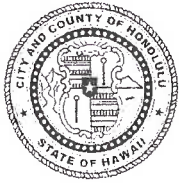
A registered transient accommodations broker tax collection agent shall file periodic returns in accordance with section-~~237D-6~~ 237-30 and annual returns in accordance with section-~~237D-7~~ 237-33.

3. The bill provides that the tax collection agent’s operators and plan managers shall obtain a license or registration and remain subject to the requirements of title 14, HRS, provided that the tax collection agent may comply with all requirements of title 14 on behalf of the operators and plan managers for business activity conducted directly through the agent. Page 5, lines 3-11, and page 12, lines 3-11. At the same time this bill also provides that a tax collection agent “shall assume all obligations, rights, and responsibilities imposed by this chapter upon its operators and plan managers” with respect to their business activities conducted directly through the tax collection agent. Page 5, line 18, through page 6, line 4, and page 12, line 18, through page 13, line 4. It is unclear who has all obligations, rights, and responsibilities imposed upon the tax collection agent’s operators and plan managers under chapters 237 and 237D, HRS – the operators and plan managers or the tax collection agent or both. We recommend that this be clarified to reflect the intent of the bill.

4. If the intent of the bill was to impose the obligations and responsibilities only on the tax collection agent and not on the operators and plan managers, we add that section 237D-4, HRS, provides that the Department of Taxation may issue a citation, which includes a monetary fine, to any person who fails to conspicuously display the registration or notice stating where the registration may be inspected or examined, or the local contact’s name, phone number, or electronic mail address at the place for which the registration is issued. Section 18-237D-4-02, Hawaii Administrative Rules, provides that each operator or plan manager is required to conspicuously display

the certificate of registration or notice stating where it may be inspected or referring the tenant or occupant to the Department of Taxation. Therefore, the registered transient accommodations broker tax collection agent, arguably, must display the required information at each of the places for which the registration is issued. If this is not the intent of this bill, we recommend that the bill be clarified.

We thank the Committees for the opportunity to provide comments.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
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HAWAII STATE CAPITOL, CONFERENCE ROOM 414  
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY  
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS  
22 MARCH 2017, 2:45 P.M.

TO: SENATOR GLENN WAKAI, CHAIR OF SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY; VICE CHAIR OF SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS  
SENATOR BRIAN T. TANIGUCHI, VICE CHAIR OF SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY  
MEMBERS OF THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY  
SENATOR CLARENCE K. NISHIHARA, CHAIR OF THE SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS  
MEMBERS OF THE SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS  
FROM: COUNCILMEMBER JOEY MANAHAN  
CHAIR OF HONOLULU CITY COUNCIL COMMITTEE ON BUDGET  
HONOLULU CITY COUNCIL, DISTRICT VII

**SUBJECT: HB 1471, HD 3**

I am testifying in opposition to HB 1471, HD 3, which would require 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.

Illegal short term vacation rentals have proliferated throughout the state. The City and County of Honolulu, along with the other counties already have current land use regulations to properly enforce county transient vacation rental laws.

With this measure, the operator is not allowed provisions for verifying whether or not the operation is in compliance with county laws, nor is there proof of compliance in form of a certification document issued by the county's land use regulations.

This bill will allow too broad of a regulation over the growing illegal short term vacation rentals that are causing our housing availability to diminish, increasing not just the counties' housing crisis, but, also the statewide housing crisis Hawaii is experiencing.

Therefore, I oppose the adoption of HB 1471, HD 3, and I urge the committee to hold the measure.

Mahalo for the opportunity to submit testimony on this bill.





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**David Y. Ige**  
*Governor*

**George D. Szigeti**  
*President and Chief Executive Officer*

Statement of  
**George D. Szigeti**  
Chief Executive Officer  
Hawai'i Tourism Authority  
on  
**HB1471 HD3 and Proposed SD1 Relating to Taxation**  
Senate Committees on Economic Development, Tourism, & Technology  
and Public Safety, Intergovernmental & Military Affairs  
Wednesday, March 22, 2017  
2:45pm  
Conference Room 414

Chairs Wakai and Nishihara, Vice-Chairs Taniguchi and Wakai, and Committee Members,

The Hawai'i Tourism Authority (HTA) offers the following **comments on HB1471 HD3 and Proposed SD1**, which would require large transient accommodations brokers, and permit all other 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 that use their services. As part of the system of using transient accommodation brokers as tax collection agents, the bill would require verification from each transient accommodation operator and plan manager that the use is in compliance with applicable land use laws. Relatedly, the bill would allocate \$1,000,000 of TAT revenues to each county for FY 2017-2018 for enforcement purposes. Finally, the bill would impose a surcharge on transient accommodations brokers. The Proposed SD1 version of this bill removes some of the earlier provisions, including mandatory registration for large transient accommodations brokers, the allocation of TAT revenues to the counties, and the surcharge tax; clarifies that it does not preempt county zoning ordinances; and includes stronger registration and enforcement provisions.

As Hawai'i competes in the global tourism market, it is critical that we ensure safe and enjoyable visitor experiences, whether our guests choose to stay in traditional accommodations or the alternative accommodations that are increasingly popular with travelers from around the world. Proponents of alternative accommodations point to the importance of supporting a variety of visitor accommodations to maximize the appeal of Hawai'i as a visitor destination, respect for visitor preferences, the economic benefit to the owners and operators of transient accommodations and the additional tax revenue to the state. Others express concern over the transient accommodation operators who do not pay their fair share of taxes, the loss of rental housing stock to transient uses, respect for land use regulations that may restrict or prohibit transient accommodations in many neighborhoods, the impact on communities that host transient accommodations and the inability to ensure the quality of the experiences for, and the safety of, visitors who stay in transient accommodations. When formulating policy for the state, the Legislature must balance and consider these competing views.

Given the various interests and concerns on both sides of the issue and the need for additional information, we recognize the importance of increased dialogue between the various stakeholders involved, and would support a working group to study the issues.

Mahalo for the opportunity to comment.



THE SENATE  
THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2017

COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY  
Senator Glenn Wakai, Chair

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS  
Senator Clarence K Nishihara, Chair

3/22/2017  
Rm. 414, 2:45 PM

HB 1471, Proposed SD 1  
Relating to Taxation

Chair Wakai, Chair Nishihara and Members of both Committee, my name is Max Sword, here on behalf of Outrigger Hotels Hawaii in strong support of HB 1471, Proposed SD 1

Outrigger Hotels Hawaii does not oppose some reasonable self-collection of taxes authority for the Transient Vacation Unit (TVU) industry. What we do oppose is the industry combining this authority with measures that would legitimize practices making it easier to skirt the law and harder to identify and address illegal activities costing the state and counties millions in lost revenues.

We support HB 1471 Proposed SD 1 in that it addresses our concerns regarding transparency and compliance of all who provide accommodations to our visitors who come to enjoy the beauty of our Islands and its people.

We need that transparency to positively assure that each and every TVU owner is paying their fair share of TAT and other taxes owed to the State of Hawaii for transient accommodations business activity. The retention of the requirements of HRS 237D-4, enacted just a few years ago, which requires that the Transient Accommodations Brokers (TAB) must receive and post online a current TAT number for any unit listed is central to maintaining that transparency.

Also, the requirement of a TAB to adhere to State and County laws and regulations, satisfies our concern on non-compliance by the TAB.

These are requirements that we in the hotel industry live by every day, but AirBnB is fighting against these requirements to be included in any TAB bill. We did it when we owned the Ala Moana Hotel with out much difficulty, why can't they?

Thank you for allowing me to testify





**HAWAI'I LODGING & TOURISM**  
**A S S O C I A T I O N**

Testimony of

Mufi Hannemann  
President & CEO

Hawai'i Lodging & Tourism Association

Senate Committees on  
Economic Development, Tourism, and Technology  
Public Safety, Intergovernmental, and Military Affairs

House Bill 1471, HD 3 – Relating to Taxation

Chair Wakai, Chair Nishihara, and committee members, on behalf of the more than 700 members of the Hawai'i Lodging & Tourism Association we support the proposed SD1 to House Bill 1471 HD3.

One of the major priorities of the Hawai'i Lodging & Tourism Association this legislative session is to create a level playing field between the short term online rental market and traditional visitor industry accommodations . This session House Bill 1470, which addressed the short term online rental parity issue, was our priority bill. However we did not object to the intent of HB1471 as long as it addressed some of the concerns we raised through HB 1470.

Through the proposed Senate Draft 1 we are glad to see that the bill suggests adding in provisions that better address the desires of the hospitality industry. We appreciate the work that has been put in crafting this language and particularly like the addition of amendments addresses in the proposed measure's Section 2, subsection j, which requires the operator and plan manager to display the tax registration and TAT ID number on advertisements as well as requiring verification of county land use laws in written form from a county agency.

We thank the committees for their yeoman work in fashioning amendments that address transparency and accountability; however, we would like to ask the committees to consider reviving a few provisions from the House's deliberations. These amendments include reintroducing the allocation of \$4 million to go to the counties for TVR compliance and enforcement purposes, adding back the 5 year sunset date, and bringing back the definition of *large transient accommodations brokers* along with language that would require only the large short term rental companies to register with the department.

One of the visitor industry's overarching objectives is for the state to start collecting the estimated \$100 million in taxes now being avoided, but with ample transparency as to where the taxes are coming from. We appreciate the dialogue and amendments that have taken place in regards to this measure and we respectfully request that the aforementioned proffered amendments also be considered through these committees' deliberations.

Thank you for the opportunity to testify.

March 21, 2017

Senator Glenn Wakai  
Chair, Committee on Economic Development, Tourism, and Technology  
& Vice Chair, Committee on Public Safety, Intergovernmental, and Military Affairs  
Senator Brian T. Taniguchi  
Vice Chair, Committee on Economic Development, Tourism, and Technology  
Senator Clarence Nishihara  
Chair, Committee on Public Safety, Intergovernmental, and Military Affairs  
Members of the Joint Committees

RE: HB 1471 HD 3 - Testimony in Support of the Intent

Good afternoon. My name is Jason Ito, Director of Labor and Community for Kyo-ya Management Company, Ltd. We represent the Osano family in Honolulu, and asset manage the properties of the Sheraton Waikiki, Royal Hawaiian, Moana Surfrider, Princess Kaiulani, and the Sheraton Maui in the State of Hawaii.

Our hotel industry and the collection of the GET and TAT is critically important to the State of Hawaii to sustain our competitive advantage in marketing the tremendous value of Hawaii, the culture of its people, and the unique environment and physical attributes of our islands.

Thank you for keenly listening and for considering the testimony received over the last few weeks. I am providing testimony supporting the intent of HB 1471 HD 3 highlighting its most significant attributes.

- Requires transient accommodations brokers to register with the State Department of Taxation to collect and remit general excise and TAT on behalf of the property owners utilizing their services
- Ensures that each property is in compliance with applicable land use laws
- Assures that non-compliant rentals are not deemed licensed which may inadvertently legalize and pre-empt county laws from being enforced
- Allocates a portion of the TAT revenue to each county to enforce county ordinances to regulate transient vacation rentals

This bill provides transparency, identification, and accountability of all commercially-operated, hospitality accommodations including short-term rental lodging units to report and pay its fair share of taxes duly owed to the State of Hawaii.

We in the hotel industry continue to maintain vigilantly, the safety and security of our destination, which continues to support our repeat visitors to the islands. Our responsibility is to create good jobs and long term employment to perpetuate our unique Hawaiian culture and to ensure that our local communities and families have the opportunity for a thriving and vibrant future.

Thank you,

  
Jason Ito

The Twenty-Ninth Legislature  
Regular Session of 2017

THE STATE SENATE

Committee on Economic Development, Tourism, and Technology

Senator Glenn Wakai, Chair

Senator Brian T. Taniguchi, Vice Chair

Committee on Public Safety, Intergovernmental, and Military Affairs

Senator Clarence Nishihara, Chair

Senator Glenn Wakai, Vice Chair

State Capitol, Conference Room 414

Wednesday, March 22, 2017; 2:45 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1471 PROPOSED S.D. 1  
RELATING TO TAXATION**

The ILWU Local 142 opposes H.B. 1471 Proposed S.D. 1, which allows transient accommodation brokers to register as a tax collection agent on behalf of all of its operators and plan managers. It also requires registered transient accommodations broker tax collection agent's operators and plan managers to obtain a GET license and TAT registration.

The Proposed S.D. 1 further requires registered transient accommodations broker tax collection agents to file periodic and annual TAT returns. The measure 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 and remove advertisements for transient accommodations for which operators and plan managers failed to comply with land use or tax requirements. It also requires the operator or plan manager 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. This measure would apply to taxable years beginning after December 31, 2017.

The previous version of this bill, H.B. 1471 HD 3, made it mandatory for a large transient accommodation broker, to be required by the director of the taxation department to register as a tax collection agent by stating, "The director of taxation shall require a large transient accommodations broker, and may allow all other transient accommodations brokers, to register as a tax collection agent . . . ." Proposed S.D. 1 changes this to a permissive situation by stating, "The director of taxation may permit a transient accommodations broker to register as a tax collection agent . . . ." This change weakens the regulatory scheme and the ILWU opposes this change.

The information required of the registered transient accommodations broker is stronger in the previous version of this measure, compared to the Proposed S.D. 1. H.B. 1471 H.D. 3 stated "The required reporting information shall include gross transient accommodations rentals and

exemptions, and taxable income from the registered transient accommodations broker tax collection agent's business activities." The Proposed S.D. 1 waters down the requirement by stating, "The reporting information shall include but not be limited to the name, address, and transient accommodations tax number of each operator and plan manager during the applicable period." If the transient accommodations broker is not a registered tax collection agent, even this requirement would not apply. The ILWU opposes this change.

H.B. 1471 Proposed S.D. 1 makes clear that all registered transient accommodations broker tax collection agents would have to notify the operator or plan manager that the subject property would have to comply with all state and county land use laws, prior to putting out any advertisement. In addition, the agent would have to provide verification of compliance in the form of a written certification, verification, or permit issued by the appropriate agency. Any advertisement for a transient accommodation put up by a transient accommodations broker, would have to be removed if the operator or plan manager fails to comply with such laws.

However these requirements apply to a registered transient accommodations broker tax collection agent. If the transient accommodations broker is not a registered tax collection agent, these requirements would not apply. The ILWU opposes the change in Proposed S.D. 1, which makes "permissive" what was previously a "mandatory" requirement that the tax director "shall require" a large transient accommodations broker to register as a tax collection agent. In addition, disincentives to deal with the "illegals" with civil and criminal penalties would represent stronger measures to provide for effective enforcement.

One major concern remaining is the amount of housing stock that is depleted from the Hawaii market, as a result of increased business for the short term rental industry, especially those profiting from "illegal" activities. This has a definite negative impact on the price of housing for Hawaii residents. Studies have suggested that Airbnb's business has substantially increased over the past year, and that this trend will continue to grow. Therefore, a strong and clear system of enforcement would be important to deal with this factor.

The ILWU Local 142 is opposed to H.B. 1471 S.D. 1, however would be supportive of a version closer to its previous draft, H.B. 1471 H.D. 3. Thank you for the opportunity to share our views on this important matter.





Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Senate Committee on Economic Development, Tourism, and Technology  
Hawai'i State Capitol, House Conference Room 414  
March 22, 2017, 2:45 p.m.

Testimony in Strong Opposition to HB 1471 HD 3

To: Chair Clarence K. Nishihara, Vice Chair Glenn Wakai  
Members of Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Chair Glenn Wakai, Vice Chair Brian T. Taniguchi  
Members of Senate Committee on Economic Development, Tourism, and Technology  
From: Charlene Cuaresma, Chair, National Federation of Filipino American Associations Region 12  
Subject: RELATING TO TAXATION

I strongly oppose this bill. My name is Charlene Cuaresma, Chair, NaFFAA Region 12, which represents the interests of Filipinos in Hawai'i, Guam, and the Commonwealth of Northern Marianas Islands. We are an affiliate of the National NaFFAA. Washington policy-makers, private industry and national advocacy groups recognize NaFFAA as the Voice of Filipinos and Filipino Americans throughout the United States. We are a non-partisan, non-profit national affiliation of more than five hundred Filipino-American institutions and umbrella organizations that span twelve regions throughout the continental United States and U.S. Pacific territories.

This bill must be killed because it is unjust that Hawai'i renters are marginalized in the housing market with a gaping lack of affordable rental units juxtaposed against a landscape of 33,000 Air B&Bs for visitors. This bill should be deferred unless it includes the following amendments:

- 1) We must not preempt the counties' ability to enact good regulations;
- 2) Rental operators should be required to certify to the tax collection broker that they are operating legally and provide documentation to back that up;
- 3) We should ensure that any measure complements – and does not nullify – Act 204 in allowing the state to hold operators accountable;
- 4) Tax collection brokers should be required to operate transparently by providing lists of names and addresses of operators to the State so the State can verify the money it is collecting reflects reality.

Thank you for the opportunity to express my opposition to this bill. I respectfully ask for your consideration to be vigilant, socially responsible, transparent and accountable in generating tax revenue for the benefit of all, while at the same time weighing the impact of vacation rentals on Hawai'i's affordable housing crisis and the realities of income inequality in our labor force.

Sincerely,

Charlene Cuaresma, Chair, NaFFAA Region 12





## 'ĀINA HAINA COMMUNITY ASSOCIATION

c/o 'Āina Haina Library, 5246 Kalanianaʻole Highway, Honolulu, HI 96821  
ainahainaassoc@gmail.com; www.ainahaina.org

Jeanne Ohta, President • Melia Lane-Kanahele, Vice-President • Art Mori, Treasurer • Kathy Takemoto, Secretary • Directors At Large: Jeff Carlson, Wayson Chow, Patricia Moore, Marie Riley

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March 22, 2017

To: Senator Glenn Wakai, Chair  
Senator Brian Taniguchi, Vice Chair and  
Members of the Committee on Economic Development, Tourism, and Technology

To: Senator Clarence Nishihara, Chair  
Senator Glenn Wakai, Chair and  
Members of the Committee on Public Safety, Intergovernmental and Military Affairs

From: Jeanne Y. Ohta, President

RE: HB 1471 HD3 Proposed SD1 Relating to Taxation

Position: COMMENTS

The Board of Directors of the 'Āina Haina Community Association (AHCA) is opposed to any measure that would legitimize or permit commercial lodging facilities in residentially-zoned neighborhoods and which take units out of the long-term residential housing market. Tax collection measures do not solve problems that our communities are experiencing.

Commercial businesses simply do not belong in residentially-zoned neighborhoods. People expect their neighborhoods to be quiet and safe. Vacationers on the other hand, have no responsibility to be good neighbors; they are on vacation and expect to have a good time. They have no incentive to be quiet and to respect the rights of neighbors. Their vacations are more appropriately spent at a hotel or resort-zoned properties where proper accommodations are available for people on vacation. Honolulu has ample vacation and resort areas which are run by travel professionals specifically for the tourist market.

There are numerous illegally operating transient vacation units (TVU's) in our neighborhoods. These units contribute to our housing shortage and the escalating prices of homes. As prices escalate, owners will be forced into becoming landlords instead of homeowners. TVU's are also detrimental to our neighborhoods because owners are not required to reside on the property.

One ocean front home in our community was rented by a group of 20 people. The neighbors had complained about the home for two years before any action was taken. Since these owners show no respect for our laws, they will ignore regulations as well.

Owners are not required to reside on site, they are not affected by the excessive noise, increased traffic, the number of additional cars parked on the street, or the presence of strangers in a residential community. They are interested in one thing only: maximizing rental income on their property.

Residential use cannot compete with the high rents that owners can charge tourists for vacation rentals.

Any proposed measure must increase the enforcement capacity of the City Department of Planning and Permitting, which has been unable to enforcement current zoning laws and effectively close illegal rentals currently operating in our neighborhoods. Too much of the burden of identifying illegal businesses has been placed on neighbors.

AHCA respectfully requests that more efforts be made to enforce our current residential zoning laws. Thank you for the opportunity to provide testimony.



**Senate Committee on Economic Development, Tourism & Technology**

Board of Directors:

**Hawai'i Alliance for Progressive Action opposes: HB 1471 HD3**

Gary L. Hooser  
President

Andrea N. Brower  
Joshua D. I. Mori  
Co-Vice Presidents

Ikaika M. Hussey  
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Katie McMillan  
Walter Ritte Jr.  
Karen Shishido  
Leslie Malu Shizue Miki  
Kekaulike Prosper Tomich  
Cade Watanabe

Dear Chairs Wakai and Nishihara and Committee Members:

My name is Anne Frederick and I am the Executive Director for the Hawai'i Alliance for Progressive Action (HAPA). HAPA is a statewide environmental, social and economic justice organization. HAPA engages over 10,000 local residents annually through our work.

From October through December of 2016 HAPA and several of our partners held a series of input gathering forums across the islands called the People's Congress. Over 800 people attended forums on Kaua'i, O'ahu, Maui and Hawai'i Island to discuss the most pressing issues facing their communities. The lack of affordable housing was one of the top concerns and priorities raised by residents across the state.

**I strongly oppose HB1471 HD3**, Airbnb's bad bill. We are in the middle of an affordable housing crisis, yet there are an estimated 33,000 homes being used as vacation rentals in the state. Homes in neighborhoods all over the state, including my own, are being rented short-term to tourists instead of long-term to residents.

I urge you to kill this bill unless it includes the following amendments:

- 1) We must not preempt the counties' ability to enact good regulations;
- 2) Rental operators should be required to certify to the tax collection broker that they are operating legally and provide documentation to back that up;
- 3) We should ensure that any measure complements – and does not nullify – Act 204 in allowing the state to hold operators accountable;
- 4) Tax collection brokers should be required to operate transparently by providing lists of names and addresses of operators to the State so the State can verify the money it is collecting reflects reality.

Thank you for considering my testimony in opposition of HB 1471.

Respectfully,

Anne Frederick, Executive Director  
Hawai'i Alliance for Progressive Action

# Keep It Kailua

## *Preserving Kailua's Character*

March 21, 2017

Dear Chair Glenn Wakai and Vice-Chair Brian T. Taniguchi of the Committee on Economic Development, Tourism, and Technology & Chair Clarence K. Nishihara of the Committee on Public Safety, Intergovernmental, and Military Affairs

We support the efforts your committees have made to ensure all short-term rental listings with a transient accommodation broker are in compliance with applicable County and State land-use laws. We praise your committee for including in HB1471 SD1 the following language;

*(j) All registered transient accommodations broker tax collection agents shall inquire and ensure that the transient accommodation is in compliance with all pertinent state and county land use laws, including but not limited to:*

*(1) Prior to placing an advertisement, including an online advertisement, on the availability of a property for lease or rent on behalf of an operator or plan manager, notifying the operator or plan manager that the subject property is required to be in compliance with applicable state and county land use laws prior to retaining the services of the transient accommodations broker;*

*(2) Requiring the operator or plan manager to display or make available its transient accommodation tax registration identification number and transient accommodations number, along with other required information in any advertisement, in compliance with section 237D-4; and*

*(3) Requiring the operator or plan manager 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.*

*A transient accommodations broker shall remove any advertisement, including an online advertisement, for a transient accommodation located in the State for which the operator or plan manager fails to comply with paragraph (2) or (3) or for which the transient accommodations broker has received written notice from a state or local*

*governmental authority that the operator or plan manager has failed to comply with applicable land use, zoning, or tax requirements.*

We believe the bill should be amended to include the following or similar language;

- *The operator or plan manager of a subject property will be fined \$1000 per day if their advertisement is listed by a transient tax broker and they are not in compliance with all pertinent state and county land-use laws as required in section (j).*
- *A short-term rental applicant for a TAT license must include the physical address of the short-term rental they are applying for in the application and this information will be made public.*

Respectively,

Keep it Kailua

*Keep It Kailua is a grassroots community group founded in 2004 whose purpose is to retain Kailua's family-oriented residential character and quality of life.*

*Keep It Kailua's goals are to:*

- *Protect residential zoning and promote permanent residency in our neighborhoods*
- *Preserve and enhance scenic, civic, recreational and cultural features that define Kailua's sense of place*
- *Protect water resources essential to the health of the environment*
- *Preserve trees and maintain open green space*
- *Promote walking and the use of non-motorized bicycles as alternatives to automobile transportation within and around the town*
- *Promote businesses that serve the residential community*
- *Support other community groups with similar goals*

*Please visit us at [www.keepitkailua.com](http://www.keepitkailua.com)*

*Or like us on Facebook: Keep it Kailua*





*Eric W. Gill, Financial Secretary-Treasurer*

*Gemma G. Weinstein, President*

*Godfrey Maeshiro, Senior Vice-President*

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Tuesday, March 21, 2017

Senate Committees on Economic Development, Tourism and Technology and  
Public Safety, Intergovernmental and Military Affairs

Hawaii State Legislature  
State Capitol  
415 South Beretania Street

Re: HB 1471, HD 3, SD 1

Aloha Chairs Wakai, Nishihara and Committee Members,

UNITE HERE Local 5 – a local labor organization representing 11,000 hotel, health care and food service workers throughout Hawaii would like to offer comments supporting the intent of HB 1471, HD 3, SD 1. We remain strongly opposed to all previous versions of HB 1471.

We would like to acknowledge the efforts made by Chair Wakai to put forth a proposed SD 1 that takes several important steps toward addressing the points we've been attempting to address since last year's legislative session.

As you know, there are today an estimated 33,000 homes throughout Hawaii being used as vacation rentals, and at the current rate, in two years that number will grow to 40,000. Regardless of what Airbnb or its commissioned reports say, vacation rentals are taking away from our housing stock, making our statewide housing crisis worse.

In sum, we believe that there are four key elements that at a minimum need to be included in whatever measure gets passed:

- It must not preempt the counties' ability to enact good regulations;
- Rental operators should be required to certify to the tax collection broker that they are operating legally, and provide documentation to back that up;
- We should ensure that it complements – and does not nullify – Act 204 in allowing the state to hold operators accountable; and

- Tax collection brokers should be required to operate transparently by providing lists of names and addresses of operators to the State so the State can verify that the money it is collecting reflects reality.

Thank you.



KOBAYASHI SUGITA & GODA, LLP  
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March 21, 2017

COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY  
Senator Glenn Wakai, Chair, Senator Brian T. Taniguchi, Vice Chair  
Via email to: [ETTtestimony@capitol.hawaii.gov](mailto:ETTtestimony@capitol.hawaii.gov)

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY  
AFFAIRS  
Senator Clarence K. Nishihara, Chair, Senator Glenn Wakai, Vice Chair  
Via email to: [PSMtestimony@capitol.hawaii.gov](mailto:PSMtestimony@capitol.hawaii.gov)

Wednesday, March 22, 2017 2:45pm  
Conference Room 414 State Capitol

Re; LATE TESTIMONY ON BEHALF OF THE INTERNET ASSOCIATION RE:  
H.B. 1471, HD3, Proposed SD1

Dear Senators:

I write on behalf of my client, the Internet Association. The mission of the Internet Association, whose membership includes the country’s leading internet companies, is to foster innovation, promote economic growth, and empower people through the free and open internet.

I respectfully urge you not to pass H.B. 1471, HD3, Proposed SD1 in its current form because of certain problematic language which will render the bill invalid, unworkable and unenforceable. H.B. 1471, HD3, Proposed SD1 attempts to address the issue of home sharing. Unfortunately, the current language of H.B. 1471, HD3, Proposed SD1 violates the federal Communications Decency Act, 47 U.S.C. § 230 (“Section 230”), is pre-empted by federal law, and would thus be unenforceable if passed. Additionally, it is impractical because it is highly unlikely that any internet platform would voluntarily sign up and agree to be bound by the terms of H.B. 1471, HD3, Proposed SD1.

Although the State may regulate in various areas, it must do so in a manner that does not conflict with federal law. Section 230 is considered the cornerstone of the legal framework that has allowed the internet to thrive, and it “protects websites from liability for material posted on the website by someone else.” Doe v. Internet Brands, Inc., No. 12-56638, 2016 WL 3067995, at \*3 (9th Cir. May 31, 2016). It does so through two key provisions. First, “[n]o provider or user

of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230 (c)(1). Second, “[n]o liability may be imposed under any State or local law that is inconsistent with this section.” *Id.* at § 230 (e)(3). As the United States District Court for the District of Hawai‘i observed, “so long as a third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific editing or selection process.” *Sulla v. Horowitz*, No. CIV. 12-00449 SOM, 2012 WL 4758163, at \*2 (D. Haw. Oct. 4, 2012) (quoting *Carafano v. Metroplash.com, Inc.*, 339 F.3d 1119, 1124 (9th Cir. 2003)).

Accordingly, courts across the country have regularly found that Section 230 preempts state laws that attempt to hold websites liable for third-party content. See, e.g., *Backpage.com, LLC v. McKenna*, 881 F.Supp.2d 1262, 1273 (W.D. Wash. 2012). Section 230 also protects websites from being forced to screen or otherwise verify third-party content. See, e.g., *Doe v. Friendfinder Network, Inc.*, 540 F.Supp.2d 288, 295 (D.N.H. 2008) (“§ 230 bars the plaintiff’s claims that the defendants acted wrongfully by . . . failing to verify that a profile corresponded to the submitter’s true identity.”); *Doe v. MySpace, Inc.*, 474 F.Supp.2d 843, 850 (W.D. Tex. 2007) (Section 230 barred claims that MySpace was liable for policies relating to age verification); *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1180 (9th Cir. 2008) (“webhosts are immune from liability for . . . efforts to verify the truth of” third-party statements posted on the website); *Prickett v. InfoUSA, Inc.*, 561 F.Supp.2d 646, 651 (E.D. Tex. 2006) (“The Plaintiffs are presumably alleging that . . . the Defendant is liable for failing to verify the accuracy of the content. Any such claim by the Plaintiffs necessarily treats the Defendant as ‘publisher’ of the content and is therefore barred by § 230.”); *Mazur v. eBay Inc.*, No. C 07-3967 MHP, 2008 WL 618988, at \*9 (N.D. Cal. Mar. 4, 2008).

There are numerous sections in H.B. 1471, HD3, Proposed SD1, which contain problematic and invalid language and thus violate Section 230. Specifically, Section (j) of H.B. 1471, HD3, Proposed SD1 requires that an internet platform serving as a tax collection agent “shall inquire and ensure” that the transient accommodation is in compliance with all pertinent state and county land use laws, by 1) requiring an operator to display its identification and other information “in any advertisement,” and 2) requiring an operator of a transient accommodation to provide a “written certification, verification or permit issued by the appropriate county agency.”

The placement of such a burden on an internet platform would violate Section 230 because it would make the internet platform responsible for the content of all advertisements, and require the internet platform to verify the accuracy of that content. Section (j) further requires that an internet platform must remove any advertisement where the operator or plan manager fails to comply with certain land use, zoning or tax requirements. In other words, an internet platform must censor the content of all advertisements posted by users. All of these requirements clearly violate Section 230 and the case law which has interpreted Section 230.

The case law noted above interpreting Section 230 has determined that mandatory restrictions of the type set forth in H.B. 1471, HD3, Proposed SD1 are impermissible. Under Section 230, an internet platform cannot be held liable as a publisher or speaker of particular content submitted by its users, and is not responsible or liable for such content. Websites are protected from being forced to screen or otherwise verify third-party content placed on their platforms. They are not required to verify the truth of statements made by their users. However, the verification requirements of H.B. 1471, HD3, Proposed SD1 would serve to impose such restrictions by attempting to require the internet platform to “ensure” certain content in advertisements and to verify the truth of any representations made as to land use laws.

Section (j) provides that:

“(j) All registered transient accommodations broker tax collection agents shall inquire and ensure that the transient accommodation is in compliance with all pertinent state and county land use laws, including but not limited to:

(1) Prior to placing an advertisement, including an online advertisement, on the availability of a property for lease or rent on behalf of an operator or plan manager, notifying the operator or plan manager that the subject property is required to be in compliance with applicable state and county land use laws prior to retaining the services of the transient accommodations broker;

(2) Requiring the operator or plan manager to display or make available its transient accommodation tax registration identification number and transient accommodations number, along with other required information in any advertisement, in compliance with section 237D-4; and

(3) Requiring the operator or plan manager 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.” (Emphasis added)

A transient accommodations broker shall remove any advertisement, including an online advertisement, for a transient accommodation located in the State for which the operator or plan manager fails to comply with paragraph (2) or (3) or for which the transient accommodations broker has received written notice from a state or local governmental authority that the operator or plan manager has failed to comply with applicable land use, zoning, or tax requirements.”



Furthermore, Section (d) of H.B. 1471, HD3, Proposed SD1 provides that an internet platform must assume all obligations, rights and responsibilities of operators and plan managers with respect to their business activities. Section (d) provides as follows:

“Under this section, a registered transient accommodations broker tax collection agent shall assume all obligations, rights, and responsibilities imposed by this chapter upon its operators and plan managers with respect to their business activities conducted directly through the registered transient accommodations broker tax collection agent from the date of registration until the registration is canceled as provided in subsection (h).”

This vague and overbroad language makes any internet platform which becomes a transient accommodations broker tax collection agent, “assume all obligations, rights, and responsibilities imposed by this chapter upon its operators and plan managers with respect to their business activities....” In other words, H.B. 1471, HD3, Proposed SD1 makes the internet platform responsible for any obligations, and the violation of any obligations, of the people and entities using the internet platform. H.B. 1471, HD3, Proposed SD1 thus penalizes internet platforms for the actions of their users. This impermissibly conflicts with and violates Section 230.

The problems that arise from the current version of H.B. 1471, HD3, Proposed SD1 are similar to the problems that have made Act 204 from the 2015 Legislative Session unworkable and ineffective. Currently, Act 204 is the only law in Hawaii which addresses the issue of regulating home sharing and the growing community of homeowners who generate supplemental income by providing their homes to transient guests. However, significant portions of Act 204 conflict with and are likely preempted by Section 230, rendering it an unenforceable and invalid law. Thus far, the State of Hawaii has not attempted to enforce Act 204, presumably because of these legal problems.

Act 204 created a strict liability regime for both websites who host third-party content, as well as all platforms on which advertisers of short-term rentals might post, including newspapers such as the Honolulu Star-Advertiser, community publications, websites like Craigslist, real estate brokers' websites, and resort timeshares in Hawai'i such as Disney and Hilton. Under Act 204, if a third-party user fails to post any of the required information on a listing, liability would automatically attach to the website operator. As a result, Act 204 imposes liability on both websites and newspapers by treating them as the “publisher or speaker” of the information (or lack thereof) provided by another in direct contravention of Section 230. This impermissible conflict likely makes Act 204 unenforceable and invalid.

Similar to Act 204, the above-noted language of H.B. 1471, HD3, Proposed SD1 attempts to place liability on internet platforms for the business activities of its users. As with Act 204, such a scheme violates Section 230. While Act 204 has not been explicitly challenged in court, suits have been filed over similar restrictions in other jurisdictions. If the State of Hawai'i were

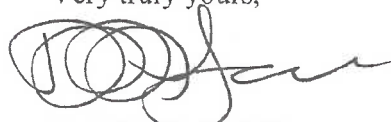
Committees  
March 21, 2017  
Page 5

to seek to enforce Act 204 or were to pass H.B. 1471, HD3, Proposed SD1 and seek to enforce it against a platform like Airbnb, Expedia, VRBO or other similar website, such enforcement would be preempted by federal law and be invalid.

Finally, we note that H.B. 1471, HD3, Proposed SD1 is simply impractical and would not accomplish the goals of the Legislature to address home sharing or tax collection as it would create a voluntary program for which no one would volunteer. It is highly unlikely that any reasonable internet platform would sign up to be a transient accommodations broker tax collection agent under this scheme. No reasonable internet platform would be likely to voluntarily assume the obligations, rights, and responsibilities imposed by Section (j) or Section (d) of this bill. Such an assumption would make the internet platform responsible for all of the content of any advertisements and make it liable for any violations of law by third party users, regardless of the lawful conduct by the internet platform. No reasonable person or internet platform would willingly assume such liabilities or responsibilities. In other words, passing H.B. 1471, HD3, Proposed SD1, as written, would not lead to any solutions to the issue of home sharing and would not further the tax collection goals of the state.

For the foregoing reasons, I respectfully urge you not to pass H.B. 1471, HD3, Proposed SD1 in its current form. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David M. Louie', with a stylized flourish at the end.

DAVID M. LOUIE

for

KOBAYASHI SUGITA & GODA, LLP

# Filipino American Citizens League

Jake Manegdeg, President  
P. O. Box 270126 \* Honolulu, Hawai'i 96827

Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Senate Committee on Economic Development, Tourism, and Technology  
Hawai'i State Capitol, House Conference Room 414  
March 22, 2017, 2:45 p.m.

Testimony in Strong Opposition to HB 1471 HD 3

To: Chair Clarence K. Nishihara, Vice Chair Glenn Wakai  
Members of Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Chair Glenn Wakai, Vice Chair Brian T. Taniguchi  
Members of Senate Committee on Economic Development, Tourism, and Technology  
From: Jake Manegdeg, President, Filipino American Citizens League  
Subject: RELATING TO TAXATION

I strongly oppose this bill. My name is Jake Manegdeg. I am the president of the Filipino American Citizens League. The Filipino American Citizens League was formed over twenty years ago to contribute to the advancement of civil rights and social justice for minority groups, underserved populations, and vulnerable communities through education, advocacy, and social action.

I strongly oppose this bill because there is no protection in sight for Hawai'i's low income renters and work force across the generations amidst Hawai'i's declining affordable housing and growing homeless crisis. This bill should not move forward until it includes the following amendments:

- 1) We must not preempt the counties' ability to enact good regulations;
- 2) Rental operators should be required to certify to the tax collection broker that they are operating legally and provide documentation to back that up;
- 3) We should ensure that any measure complements – and does not nullify – Act 204 in allowing the state to hold operators accountable;
- 4) Tax collection brokers should be required to operate transparently by providing lists of names and addresses of operators to the State so the State can verify the money it is collecting reflects reality.

We must take care of Hawai'i's people with affordable housing and means to supplement their income, while at the same time ensure that accountable and transparent measures are in place and implemented to regulate legal vacation rentals and collect our State's due taxes.

Very Sincerely,

Jake Manegdeg  
President  
Filipino American Citizens League



## Nursing Advocates & Mentors, Inc.

... a non-profit organization with a mission to address the global nursing shortage by providing guidance and assistance for nursing colleagues to obtain their professional license in nursing.

P.O. Box 2034 Aiea, HI 96701

E-mail: [namihonolulu@yahoo.com](mailto:namihonolulu@yahoo.com)

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Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Senate Committee on Economic Development, Tourism, and Technology  
Hawai'i State Capitol, House Conference Room 414  
March 22, 2017, 2:45 p.m.

### Testimony in Strong Opposition to HB 1471 HD 3

To: Chair Clarence K. Nishihara & Chair Glenn Wakai  
Members of Senate Committee on Public Safety, Intergovernmental,  
and Military Affairs and Members of Senate Committee on  
Economic Development, Tourism, and Technology  
From: Beatrice Ramos Razon, President, Nursing Advocates and Mentors, Inc.  
Subject: RELATING TO TAXATION

I strongly oppose this bill. My name is Beatrice Ramos-Razon. I am testifying as the founder and president of NAMI (Nursing Advocates & Mentors, Inc.). NAMI's membership is comprised of over 75 volunteer nurses, instructors, allied health care professionals, and Filipino leaders, who are dedicated to improve the health of Hawai'i's people through education, mentoring, advocacy and service.

I am a registered voter and constituent in District 32, Salt Lake. I work in Senate District 9 as a Kapi'olani Community College nursing faculty. As nurses who encounter results of declining health of people suffering from income inequality and lack of affordable housing, we are outraged at this bill, which should be killed unless the following amendments are made:

- 1) We must not preempt the counties' ability to enact good regulations;
- 2) Rental operators should be required to certify to the tax collection broker that they are operating legally and provide documentation to back that up;
- 3) We should ensure that any measure complements – and does not nullify – Act 204 in allowing the state to hold operators accountable;
- 4) Tax collection brokers should be required to operate transparently by providing lists of names and addresses of operators to the State so the State can verify the money it is collecting reflects reality.

Thank you for the opportunity to express my opposition to this bill. I urge you to be equitable by protecting the interests of those who have less than enough.

Sincerely,

Beatrice Ramos Razon, RN, FACDA, President, Nursing Advocates and Mentors, Inc.