



**STATE OF HAWAII
DEPARTMENT OF TAXATION**

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To: The Honorable Glenn Wakai, Chair
and Members of the Senate Committee on Economic Development, Tourism, and
Technology

The Honorable Clarence K. Nishihara, Chair
and Members of the Senate Committee on Public Safety, Intergovernmental, and
Military Affairs

Date: Wednesday, March 21, 2018
Time: 1:45 P.M.
Place: Conference Room 414, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 2605, H.D. 2, Proposed S.D. 1, Relating to Transient Accommodations

The Department of Taxation supports the intent of H.B. 2605, H.D. 2, Proposed S.D. 1, and offers the following comments regarding the tax provisions, for the Committees' consideration. This measure is effective upon approval.

Part I

Part I of the bill creates a one-time tax amnesty program, to begin no later than October 31, 2018 and be completed before January 1, 2019. The program would allow taxpayers to apply for a waiver of all civil penalties and interest and criminal prosecution for any general excise tax (GET) and transient accommodations tax (TAT) liability arising from the 2017 tax year or earlier. The program excludes taxpayers under criminal investigation, but allows taxpayer under audit to participate.

As an initial point, the Department notes that it already has a voluntary disclosure program, which allows taxpayers to voluntarily disclose tax liabilities to the Department. See Tax Information Release 2016-02. If the committees nevertheless determine that an amnesty program is necessary, the Department suggests keeping the mandate that the Department develop and administer an amnesty program, but deleting the other provisions. This will give the Department the flexibility to develop the details, such as eligibility requirements, in a fair manner. The Department notes that it previously administered an amnesty program, the Tax Fresh Start Program, from May 18, 2009 to June 26, 2009. If, however, the committee opts to

keep the terms of the program in this bill, the Department suggests the following amendments:

First, the Department suggests deleting the provisions that require the adoption of rules to administer the program, as the adoption of rules is time consuming and not necessary for a one-time program. The Department can administratively enforce the requirements of the program without rules.

Second, the Department suggests amending the eligibility requirements to exclude from participation taxpayers who have criminal tax convictions, taxpayers who are parties to pending civil or criminal tax litigation (for the tax type or period at issue), taxpayers under audit (for the tax type or period under audit), and taxpayers who have been contacted by the Department concerning a return (for the tax type or period at issue). These eligibility requirements are similar to those under the Department's 2009 Tax Fresh Start Program.

Third, the Department notes that, with respect to the program dates of October 31, 2018 to January 1, 2019, if the completion date refers to the date that all applications must be completely processed, this period is likely too short. Additionally, the timing of the program may be problematic because the program period will immediately precede the filing period for individual income tax, which will be processed in the Department's new tax system, Gentax, for the first time as part of Rollout 4 of the Department's Tax System Modernization Program.

Fourth, the Department suggests increasing the minimum lump-sum payment for installment payment agreements from 25 percent to 50 percent. Generally, the purpose of an amnesty program is to give taxpayers a fresh start while allowing the State to recognize revenue immediately. A larger lump-sum payment will help achieve that goal.

Fifth, the Department suggests, instead of waiving all interest for unpaid taxes, reducing the interest due by 50 percent, similar to what was offered by the Department in its Tax Fresh Start Program in 2009.

Finally, with respect to the provision that all of the revenue collected under the program shall go to the general fund, the Department notes that it is unclear why the allocation of tax revenue would be treated differently based on the method of collection.

Part II

Part II of the bill permits transient accommodations brokers to voluntarily register as tax collection agents on behalf of operators and plan managers for the GET and TAT. The following is a summary of key tax provisions of Part II:

Duties as Tax Collection Agent

- A transient accommodations broker who voluntarily registers as a tax collection agent will be required to report, collect, and pay GET and TAT on behalf of all of its operators and plan managers for transient accommodations booked directly through the registered agent.

- The registered agent's operators and plan managers will be required to be licensed under chapters 237 and 237D, Hawaii Revised Statutes (HRS).

Reporting Requirements

- The registered agent must provide the following information in a cover sheet with every tax return filed with the Department: the name, address, and license identification number of each operator; the address of each transient accommodation; the number of nights that each transient accommodation was rented; the amount of tax being remitted for each transient accommodation; and the amount of income reportable on federal form 1099 for each transient accommodation.
- The registered agent must disclose the information in the cover sheet to the planning director or any county official.

Compliance with Land Use Laws

- Prior to advertising a property, the registered agent shall: (1) notify the operator that the property is required to be in compliance with applicable land use laws; (2) require the operator to provide the transient accommodations number and local contact and include said information in the advertisement; (3) require the operator to provide verification of compliance with state and county land use laws; and (4) require the operator to attest that the property is in compliance with applicable land use laws.

The Department requests that the bill is amended to make Part II apply to tax years beginning after December 31, 2018 to allow the Department sufficient time to make the necessary form and computer system changes.

Thank you for the opportunity to provide comments.

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i Office of the Mayor

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March 19, 2018

Senator Glenn Wakai, Chair
Committee on Economic Development, Tourism, and Technology
Hawai'i State Capitol, Room 414
Honolulu, HI 96813

Senator Clarence K. Nishihara, Chair
Committee on Public Safety, Intergovernmental, and Military Affairs
Hawai'i State Capitol, Room 414
Honolulu, HI 96813

Dear Chair Wakai and Nishihara, and Committee Members:

Re: HB 2605, HD 2, Proposed SD 1, Relating to Transient Accommodations
Hearing Date: 03-21-18 – 1:45 pm; Conference Room 414

Thank you for the opportunity to comment on proposed amendments to HB 2605, HD 2. I mostly will limit my remarks to Section 14 of the proposed SD 1.

Section 14 would allocate an unspecified percentage of GET and TAT 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. I cannot tell from the language whether this allocation is meant to replace or to supplement the TAT funds that the counties presently receive. Only if these payments would be in addition to current allocations, could Hawai'i County support it.

A second point is that, if the State is looking for increased enforcement of vacation rentals, what is the financial impact of that increased enforcement? It is more inspectors, and more appeals, and contested cases on enforcement of vacation rentals, and the problem will persist indefinitely. Therefore the payments to the counties should be every year. I think, but am not certain, that Section 14 is providing annual allocations to the counties. I would ask that the language be made clearer, to avoid any ambiguity.

Then third, the question remaining would be the amount. What is the right amount for the State to invest in fixing this problem? As formerly provided, a \$1 million allocation per county seemed viable. Anything less would be inadequate to solve the problem with vacation rental enforcement.

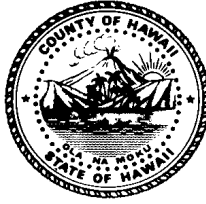
In closing, I would note that previous versions of this bill gave a lot more teeth to enforce on third party platforms, i.e., Airbnb and VRBO. Gutting that language will make it harder for counties to enforce illegal vacation rentals, so if the State is looking for meaningful enforcement, please consider restoring the stricter language.

Respectfully submitted,

Harry Kim
Mayor, County of Hawai'i

County of Hawai'i is an Equal Opportunity Provider and Employer.

From the office of -
Council Member
District 3



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SUSAN L.K. LEE LOY

25 Aupuni Street, Hilo, Hawai'i 96720

The Honorable Senator Glenn Wakai, Chair
And members of the Committee on Economic Development, Tourism, and Technology

The Honorable Clarence K. Nishihara, Chair
And members of the Committee on Public Safety, Intergovernmental, and Military Affairs

March 19, 2018

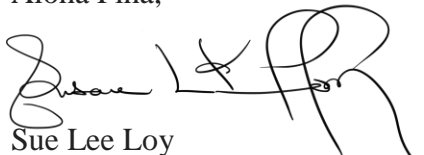
Dear Chair Wakai, Chair Nishihara, and Joint Committee Members,

I thank you for the opportunity to provide testimony in support of the proposed SD1 draft of HB 2605. As with other counties throughout the State, Hawai'i County is trying to catch up with the relatively new economic category of transient accommodations brokers such as AirBnB. In seaside communities in my district along Kalaniana'ole Avenue, long-time residents tell me that the growth of short-term vacation rentals by commercial operators irrevocably changes their neighborhoods while reducing the housing supply and by not contributing fairly to the tax base.

Last week, on March 13, a concerned community member from my district gave a terrific and comprehensive presentation to the Hawai'i County Council's Finance Committee on the overabundance in short-term vacation rentals in certain communities, the loopholes that allow commercial operators to take over neighborhoods without regulation, and comparisons with other jurisdictions nationwide that have taken action. The presentation explained the different kinds of short-term vacation rental operators, from the low-impact ones who are renting out a room, to those nonresidents who take advantage of a lax regulatory process to make a lot of money on seaside communities. These profits are then used to buy out other homes in the community, and to outbid any counter-offer, thereby accelerating the conversion. The presentation is about 2 hours long and available online at bigislandvideonews.com. Although the communities mentioned are all on Hawai'i Island, the issues are applicable across the State.

Our County Council is also considering its own bill to address the impacts of short term rentals, although it is on hold pending the resolution of an ethics complaint. This bill and the proposed SD1 draft of HB 2605 are complementary, and together they can provide tools for the counties to ensure that our residential communities will remain residential and not become single family resorts, and that real property tax rates will be fair and based on actual use.

Aloha Piha,

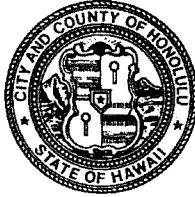

Sue Lee Loy
Council Member, District 3

Hawai'i County Is an Equal Opportunity Provider And Employer

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CITY AND COUNTY OF HONOLULU

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March 21, 2018

The Honorable Glenn Wakai, Chair
and Members of the Committee on Economic
Development, Tourism and Technology
The Honorable Clarence K. Nishihara, Chair
and Members of the Committee on Public Safety,
Intergovernmental, and Military Affairs
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Wakai and Nishihara, and Committee Members:

Subject: House Bill No. 2605, HD 2, Proposed SD 1
Relating to Transient Accommodations

The Department of Planning and Permitting (DPP) is pleased to **strongly support** House Bill No. 2605, HD 2, Proposed SD 1. It introduces significant new tools to help the counties better administer and enforce appropriate regulations on short-term vacation rentals, particularly in our residential neighborhoods. We offered similar testimony on Senate Bill No. 2963.

The department takes no position on the establishment of registered tax collection agents and the tax amnesty program in this Bill. However, we do support:

- The requirement that registered tax collection agents must share information with the county planning directors and mayors, including the location of the vacation rental property, the name of the operator, and the number of nights the property was rented;
- The requirements that operators provide evidence that each property complies with applicable State and county land use laws, as confirmed by the appropriate agency;
- The requirement that any advertisement must be removed within seven days of notification if it does not adhere to the compliance requirements;
- The ability of counties to impose penalties, including disgorgement of unlawful profits gained from illegal businesses;
- The clarification of reasonable notice to correct any zoning violation;

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House Bill No. 2605, HD 2, Proposed SD 1
March 21, 2018
Page 2

- Clarification of the ability of counties to seek injunctive relief regarding short-term rental violations without the necessity of demonstrating irreparable injury;
- The ability of the counties to recover attorney fees and other costs of action from the violator;
- The establishment that advertisements not in compliance with given requirements may be liable for civil fines ranging from \$25,000 to \$100,000, as determined by each county; and
- A more explicit policy regarding the counties' ability to amortize both conforming and non-conforming single-family transient vacation rental units.

We are appreciative of Section 14 of the Bill, which provides a financial incentive for counties to establish a verification process for transient vacation rentals.

We do offer an amendment to Section 10, Ch. 48B (b) (c) of this Bill, which calls for a violation to be classified a Class C felony. Perhaps the threat of criminal prosecution will persuade transient accommodations brokers to comply with the law, but we feel a Class C felony may be a bit harsh. We recommend that a violation be classified instead as a misdemeanor.

Accordingly, we believe that this Bill will help the counties to better enforce county rules and ordinances relating to short-term rentals. We urge your committee to pass this Bill.

Thank you for the opportunity to testify.

Very truly yours,



Kathy Sokugawa
Acting Director

Bernard P. Carvalho, Jr.
Mayor



Michael A. Dahilig
Director of Planning

Wallace G. Rezentes, Jr.
Managing Director

Ka'aina S. Hull
Deputy Director of Planning

PLANNING DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite A-473, Līhu'e, Hawai'i 96766

**Testimony before the Senate Committees Economic Development, Tourism, and Technology
and Public Safety, Intergovernmental and Military Affairs**

HD2605 HD2 Relating to Transient Accommodations PROPOSED SD1

Wednesday, March 21, 2018 at 1:45 pm Conference Room 414

By Michael A. Dahilig, Director of Planning, County of Kaua'i

Chairs Wakai, Nishihara and Honorable Members of the Committee:

On behalf of the County of Kaua'i Planning Department, I offer testimony in **STRONG SUPPORT** of this measure. This issue is critical toward finding the necessary balance in enforcement and shared responsibility for vacation rental activities that are presently out of control and cannibalizing our precious residential home inventory.

Throughout the debate on the matter, including on other bills and in different version, one thing remains clear – AirBNB does not want to bear any responsibility for the illegal actions of vacation rental operators, yet will continue to facilitate rental transactions. The current legal regime does not require them to bear any risk, and let's be straight that this is their business model.

Hotel operators, when they develop new structures, run through the gamut of permitting and control to insure they are in balance with the environment – development costs that run into the millions. AirBNB does not have to do any of that because they are converting structures built for another purpose – housing our people - and that's why they are worth more than Marriott or Hilton on the New York Stock Exchange.

Do not be fooled – they have more to lose here. This bill follows San Francisco's laws – laws they ultimately agreed to as legal, and only after their high priced lobbyists and lawyers ran their city officials through the gauntlet with scare tactics like “federal preemption” or “we don't want to play.”

In this case, they also lied on the radio say they're working with the Counties, but I have not once gotten a phone call from them. Also notice how they never talk in specifics, nor do they propose alternative language to make things better or come to a compromise.

Why are they trying these tactics again with us when we already know the playbook they used in San Francisco? Hawai'i is an ethical place with values, and any company that acts this way and takes the generosity of our people as simply minimizing business risk should not belong here, no matter what they want to pay.

In the end, this bill strikes a fair balance between insuring vacation rental transient activities pay their fair share in taxes, and preventing the Counties to be at a disadvantage in the regulation of their zoning laws. We further appreciate enhanced criminal penalties relating to illegal vacation rental usage, while recognizing the complicit role online.

The improved County zoning authority in this bill will help us to hold illegal vacation rental operators responsible. We believe it will have a positive trickle down impact on preserving our local neighborhoods, keeping resort uses in resort areas, preserving our residential housing stock, and minimizing procedural barriers to insure timely due process.

We do acknowledge the inclusion of some type of financial support for enforcement, and would gladly accept and support it in the scale of that proposed in the House versions of the bill.

We thank the Chairs for proposing this new senate draft and we respectfully urge your committees to **APPROVE** this most timely and important piece of legislation. Mahalo for your consideration.



Tuesday March 20th, 2018

Senate Committee on Economic Development, Tourism, and Technology
Senator Glenn Wakai, Chair; Senator Brian T. Taniguchi, Vice Chair

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair; Senator Glenn Wakai, Vice Chair

Wednesday, March 21, 2018, 1:45 p.m.
Conference Room 414

TESTIMONY IN OPPOSITION TO H.B. 2605, H.D. 2, PROPOSED S.D. 1

Dear Chairs, Vice-Chairs, and Members of the Committees:

On behalf of Airbnb, I wanted to take the opportunity to share our concerns regarding H.B. 2605, H.D. 2, PROPOSED S.D. 1. Let me first restate a point we have repeatedly made before -- we want to help the state solve the long standing problem of fully and effectively collecting taxes from the short-term rental industry in the islands. We already do this on behalf of hosts in more than 350 jurisdictions globally, generating hundreds of millions of dollars in revenue for local jurisdictions. We believe our experience in tax collection and remittance can greatly benefit Hawaii. We are committed to being a good partner with the state and can only help to solve this issue if we are allowed to collect and remit taxes on behalf of our hosts statewide. To that end, we continue to dedicate ourselves to working with the State Legislature and the Governor's Office and are hopeful that we can successfully reach an agreement after years of effort.

Unfortunately, while H.B. 2605, H.D. 2, PROPOSED S.D. 1 allows platforms to collect and remit taxes on behalf of hosts, the measure only allows them to do so under onerous and unacceptable conditions which violate federal law. Because of this, Airbnb can not agree to voluntarily collect and remit taxes under this bill as currently drafted, and we oppose this bill. We have summarized our concerns below:

- The bill violates two federal laws - the Communications Decency Act (CDA) and the Stored Communications Act (SCA) in a number of ways. The bill requires platforms, as a condition of collecting and remitting taxes, to turn over private information for people using the platform. Even if this provision were not in violation of federal law, no platform would agree to collect and remit taxes under these conditions since hosts would simply migrate to another rental platform that did not disclose their personal information. As a result, the state or county would neither receive the tax revenue nor the data, defeating the intent of the bill. Testimony from Airbnb's legal counsel, David Louie, provides a detailed analysis of the bill's legal flaws.
- When applied on Oahu, the bill would create extraordinarily onerous enforcement provisions for a 1989 ordinance, and does not take into account any of the current market realities, the changing nature of the global tourism market, the creation and establishment of the internet, and the growth of the alternative accommodations market since the regulations and permitting for short-term rentals were last updated nearly 30 years ago.
- This bill does not contemplate a fair process for regulating the industry but rather simply seeks to impose harsh punishments, including subjecting internet hosting platforms to class C felony criminal penalties for "engaging in business", "employing", or "contracting with" an operator or plan manager who is "not in compliance with all state laws and county ordinances". Class C felonies are punishable by up to five years' imprisonment and a fine of up to \$10,000. H.B. 2605, H.D. 2, PROPOSED S.D. 1 seeks to criminalize the mere act of "engaging in business" with an operator or plan manager who is not in compliance with all state laws and county ordinances. Thus, an internet hosting platform may be punished with criminal penalties (fines and imprisonment) if a person or entity who it does business with is not in compliance with each and every applicable state tax law, traffic law, zoning ordinance or land use law. Even if this is limited only to land use laws, H.B. 2605, H.D. 2, PROPOSED S.D. 1 thereby seeks to make an internet hosting platform financially responsible for the content (or lack of content) of any online advertisement, and seeks to financially penalize and imprison the internet platform, for the actions or inactions of other people and entities using the internet platform, not for anything that the internet platform has done. These proposed class C felony criminal penalties against internet platforms are unfair and unwarranted. The bill requires operators and/or property owners to provide the Transient Accommodations Broker, including platforms, "with verification of compliance with state land use laws or county land use ordinances" when no such verification process exists at the state or local level. It asks the operators to generate evidence for which there is no uniform way to

demonstrate compliance, and it asks the platforms to be responsible for verifying documents that do not currently exist and do not have a uniform standard.

- It makes it illegal for a Transient Accommodations Broker, including platforms, to do business with an operator “who is not in compliance with all state laws and county ordinances.” This is an impossible standard since there is no way to verify that an operator is in compliance with all laws at any given time. Moreover it subjects platforms who violate this unfair standard to extraordinary fines of a minimum of \$25,000.00, not for their own behavior, but for the misbehavior of someone else.
- Additionally, the bill requires that if counties impose a civil fine on operators of transient accommodations that the fine be set at a minimum of \$25,000.00, with no cap on the maximum fine that can be levied.
- As an example, on Oahu, if a local resident lives full time in their home outside of a resort area, but occasionally rents out a room in their house to generate extra income, that local resident would potentially be subject to a minimum \$25,000.00 fine.
- If a local Oahu resident goes on vacation for a week and wants to rent their home out while they are away, they will likely be subject to a minimum \$25,000.00, and potentially much more since there is no cap on the fines that can be imposed.
- While there has been much discussion among legislators about allowing local residents to share their home legally, this bill does nothing to protect those activities while at the same time imposing extraordinarily onerous and legally dubious penalties.
- There has been no discussion of the devastating impact this bill will have on the Hawaii economy, which will be significant, hurting local residents, small businesses, and the entire Hawaii tourism industry. Hundreds of millions if not billions of dollars in tourist revenue could be at risk if this bill were adopted as currently proposed.
 - Alternative accommodations support the state’s biggest industry and generate millions in annual tax revenue.
 - Lodging and non-lodging spending by guests staying at vacation rentals would have generated over \$120 million in GET and TAT statewide in 2016.
 - Efforts to over regulate alternative accommodations would have a significant impact on the health of the state’s largest industry.
 - A 2016 HSA report found alternative accommodations generate \$5.1 billion in economic impact for the state and help support 34,000 jobs.

- A large-scale reduction of the supply of alternative accommodations would likely result in decreases in visitor spending, GET and TAT collection as well as the reduction in air service to our island state.
- According to a new study by the local economic consulting firm Kloninger and Sims stated “The current level of airlift into the state could not be sustained without alternative accommodations remaining a robust component of Hawai‘i’s visitor accommodations mix.”
- Alternative accommodations help support Hawai‘i’s visitor industry and are crucial to the health of the state’s economy.
 - While visitor arrivals and airlift grew by 23% and 28.6% respectively between 2011-2016, the supply of traditional visitor accommodations in Hawai‘i has been growing at a much slower rate.
 - The additional elastic supply of alternative accommodations created by platforms such as Airbnb and HomeAway has allowed the state’s largest industry to continue to grow as visitor demand for accommodations has increased.

In conclusion, this bill will generate zero new revenue for the state while severely negatively impacting the local economy, hurting local residents and businesses. We will continue to work with local leaders to develop common sense regulations on short-term rentals, and remain willing to work with the state to develop a path to allow us to collect and remit taxes on behalf our hosts, but this bill is a significant step backward in that effort and is harmful to Hawai‘i’s economy.

Regards,



Matt Middlebrook
Head of Public Policy, Hawaii



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March 20, 2018

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

Senator Glenn Wakai, Chair, Senator Brian T. Taniguchi, Vice Chair

Via email to: ETTtestimony@Capitol.hawaii.gov

SENATE 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

HEARING DATE: Wednesday, March 21, 2018

TIME: 1:45 p.m.

PLACE: Conference Room 414

Re: TESTIMONY ON BEHALF OF AIRBNB OPPOSING H.B.2605, H.D. 2, PROPOSED S.D. 1 DUE TO SERIOUS LEGAL CONCERNS

Dear Senators:

We write on behalf of our client, Airbnb, to oppose H.B.2605, H.D. 2, PROPOSED S.D. 1 due to serious legal concerns regarding the language of this bill. Airbnb provides a marketplace for people to list, discover, and book unique accommodations and experiences, connecting travelers at any price point in more than 65,000 cities and 191 countries.

H.B. 2605, H.D. 2, PROPOSED S.D. 1 contains problematic language that will render it invalid, unworkable, and unenforceable. The intended purpose of H.B. 2605, H.D. 2, PROPOSED S.D. 1 is to address the issue of taxation relating to transient accommodations. H.B. 2605, H.D. 2, PROPOSED S.D. 1 allows transient accommodations brokers to register as a tax collection agent on behalf of all of its operators and plan managers, and requires registered tax collection agents to file periodic and annual GET and TAT returns containing certain required information. H.B. 2605, H.D. 2, PROPOSED S.D. 1 also requires a transient accommodations broker to obtain and publish certain information in any online advertisement.

Unfortunately, the current language of H.B. 2605, H.D. 2, PROPOSED S.D. 1 violates two federal laws: (1) the federal Communications Decency Act, 47 U.S.C. § 230 (“Section 230”

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or “CDA”) and (2) the Stored Communications Act, 18 U.S.C. Chapter 121 §§ 2701–2712 (“SCA”). Section 230 and the SCA are two laws which provide vital protections that ensure a free and open internet. H.B. 2605, H.D. 2, PROPOSED S.D. 1 is therefore preempted by federal law, and would thus be unenforceable if passed. In addition, H.B. 2605, H.D. 2, PROPOSED S.D. 1 violates the Fourth Amendment to the U.S. Constitution, and Article I, Section 7 of the Hawaii Constitution, and is therefore invalid.

We will first discuss Section 230 and the SCA, before discussing the specific provisions of H.B. 2605, H.D. 2, PROPOSED S.D. 1 which violate federal and state law and are unenforceable.

Section 230 of the Communications Decency Act.

Although a municipality 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 Hawaii 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. Metrosplash.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).

The Stored Communications Act.

In 1986, Congress enacted the SCA, 18 U.S.C. Chapter 121 §§ 2701–2712, to give persons using internet platforms statutory protection, similar to the Fourth Amendment, against

access by the government to stored electronic private information held by those internet platforms, without due process such as a search warrant. Orin S. Kerr, *A User's Guide to the Stored Communications Act, and a Legislator's Guide to Amending It*, 72 GEO. WASH. L. REV. 1208, 1209–13 (2004). The SCA limits the government's ability to compel internet platforms to disclose information in their possession about their users, and limits the internet platform's ability to voluntarily disclose information about their users to the government, absent a subpoena, warrant, or court order. The SCA contains both criminal and civil penalties for violations. Numerous courts have held that the SCA applies to internet platforms and websites. *Brown Jordan Int'l Inc. v. Carmicle*, 846 F.3d 1167 (11th Cir. 2017); *Crispin v. Christian Audigier, Inc.*, 717 F. Supp. 2d 965 (C.D. Cal 2010); *Campbell v. Facebook, Inc.*, 315 F.R.D. 250 (N.D. Cal 2016).

Recently, in *Homeaway.com, Inc. v. City of Portland*, Civil No. 3:17-cv-00091-PK, U.S. District Court, District of Oregon at Portland, a federal judge restricted the city of Portland from enforcing some of its lodgings tax regulations against HomeAway, a vacation rental website. That case involved regulations by the city of Portland which required HomeAway to provide information to the city—including customer names, listings, and rental addresses, and potentially lengths and prices of stays arranged through its websites—without a subpoena or other legal process. U.S. District Judge Michael W. Mosman ruled that significant portions of the regulations would violate the federal Stored Communications Act. See http://www.oregonlive.com/portland/index.ssf/2017/03/post_588.html.

H.B. 2605, H.D. 2, PROPOSED S.D. 1 impermissibly violates the CDA.

Proposed Section 8 of H.B. 2605, H.D. 2, PROPOSED S.D. 1 adds a new section to Section 237. Proposed Section 9 of H.B. 2605, H.D. 2, PROPOSED S.D. 1 adds a new section to Section 237D. Both new sections appear to contain the same proposed language with some minor variations. The new proposed section (a) under both proposed provisions of Sections 8 and 9 of H.B. 2605, H.D. 2, PROPOSED S.D. 1 (applicable to both Sections 237 and 237D) provides, in part, that:

“The director may permit a transient accommodations broker to register as a tax collection agent on behalf of all of its operators and plan managers by entering into a tax collection agreement with the director or by submitting a tax collection agent registration statement to the director; provided that the transient accommodations broker has obtained written consent from the operators and plan managers for the periodic returns and disclosure of information required under subsection (g) and agrees to furnish information to the counties as required in subsection (g)”

The new proposed section (i) under both proposed provisions of Sections 8 and 9 of H.B. 2605, H.D. 2, PROPOSED S.D. 1 (applicable to both Sections 237 and 237D) provides that:

“(i) All transient accommodation brokers, **prior to publishing an advertisement, including an online advertisement**, on the availability of a property for lease or rent on behalf of an operator or plan manager: ***

(2) **Shall require the operator or plan manager to provide the transient accommodations broker with the operator's or plan manager's transient accommodations number and local contact information and include this information in the advertisement,** pursuant to section 237D-4;

(3) **Shall require the operator or plan manager to provide the transient accommodations broker with verification of compliance with state and county land use laws** in the form of a written certification, verification, or permit, as applicable, issued by the appropriate county agency;... (Emphasis added.)”

In other words, H.B. 2605, H.D. 2, PROPOSED S.D. 1 requires that before publishing any online advertisement, a transient accommodations broker must obtain written consent from each and every operator or plan manager that it deals with for the disclosure of certain information, and must also obtain specific information regarding the transient accommodations number and local contact information, and include this information in the advertisement. The transient accommodations broker must also obtain written verification of compliance with state and county land use laws from the appropriate county agency before publishing any online advertisement.

H.B. 2605, H.D. 2, PROPOSED S.D. 1 thus makes an internet platform responsible for the content (or lack of content) of any online advertisement, and makes an internet platform responsible for the obligations, and the violation of any obligations, of the people and entities using the internet platform. H.B. 2605, H.D. 2, PROPOSED S.D. 1 penalizes a hosting platform for the status of its users' homes or units or the lack of verification from a county agency, and requires a hosting platform to determine such status before allowing a user to use the internet website to post an online advertisement. H.B. 2605, H.D. 2, PROPOSED S.D. 1 further penalizes a hosting platform if that platform does not obtain specific written consent from each and every possible operator or plan manager who might utilize the services of the hosting platform. H.B. 2605, H.D. 2, PROPOSED S.D. 1 thus penalizes hosting platforms for the actions of their users. H.B. 2605, H.D. 2, PROPOSED S.D. 1 seeks to make the internet platform an enforcement agent for the state or the county with regard to land use laws. This impermissibly conflicts with and violates Section 230.

Section 10 of H.B. 2605, H.D. 2, PROPOSED S.D. 1 adds a new section to Chapter 481B, Hawaii Revised Statutes, to state, in pertinent part, that:

“(a) **It shall be unlawful for a transient accommodations broker to engage in business with an operator or plan manager,** including any person or entity employed, contracted, or otherwise engaged by the operator or plan manager for property management or as an activity provider, **who is not in compliance with all state laws and county ordinances,** including any laws and ordinances regarding land use, taxes, and professional licenses.

(b) **It shall be unlawful for a transient accommodations broker,** on behalf of an operator or plan manager, **to employ, contract, or otherwise engage in business with any person or entity** to manage any property of the operator or plan manager or to act as

an activity provider for transients served by the operator or plan manager **if the person or entity is not in compliance with all state laws and county ordinances**, including but not limited to laws and ordinances regarding land use, taxes, and professional licenses.

(c) Violation of this section is a class C felony. (Emphasis added.)”

H.B. 2605, H.D. 2, PROPOSED S.D. 1 thus subjects an internet hosting platform to class C felony criminal penalties for “engaging in business”, “employing”, or “contracting with” an operator or plan manager who is “not in compliance with all state laws and county ordinances”. Class C felonies are punishable by up to five years’ imprisonment and a fine of up to \$10,000. (Haw. Rev. Stat. Sections 706-640, 706-660.) H.B. 2605, H.D. 2, PROPOSED S.D. 1 seeks to criminalize the mere act of “engaging in business” with an operator or plan manager who is not in compliance with all state laws and county ordinances. Thus, an internet hosting platform may be punished with criminal penalties (fines and imprisonment) if a person or entity who it does business with is not in compliance with each and every applicable state tax laws, traffic laws, zoning ordinances or land use laws. Even if this is limited only to land use laws, H.B. 2605, H.D. 2, PROPOSED S.D. 1 thereby seeks to make an internet hosting platform financially responsible for the content (or lack of content) of any online advertisement, and seeks to financially penalize and imprison the internet platform, for the actions or inactions of other people and entities using the internet platform, not for anything that the internet platform has done. These proposed class C felony criminal penalties against internet platforms are unfair, unwarranted and clearly violate Section 230.

Proposed Section 12 of H.B. 2605, H.D. 2, PROPOSED S.D. 1 amends Section 46-4(a), Hawaii Revised Statutes, to state, in pertinent part, that:

“The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section and any ordinance enacted in accordance with this section. **The ordinances may be enforced by appropriate fines, penalties, and remedies for disgorgement of all profits and restitution of any money, real property, or personal property that was obtained through unfair or unlawful business acts and practices, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.** In any action brought under this part, the court or zoning agency, in addition to any fine imposed upon the ordinance violator, shall allow costs of action, including costs and fees of any nature and reasonable attorney's fees, to be paid by the ordinance violator. ***

The counties shall ordain ordinances prohibiting transient accommodations brokers from engaging in business with an operator or plan manager who is not in compliance with all state laws and county ordinances, including but not limited to laws and ordinances regarding land use, taxes, and professional licenses. **Violation of these ordinances shall be a class C felony enforceable by the respective county prosecutor. (Emphasis added.)”**

H.B. 2605, H.D. 2, PROPOSED S.D. 1 thus subjects an internet hosting platform to “disgorgement of profits” and the imposition of civil fines to be levied by the county planning director of the county where the subject property is located. H.B. 2605, H.D. 2, PROPOSED S.D. 1 also seeks to create a new cause of action to subject an internet platform to a civil lawsuit brought by the owner or owners of real estate who claim to be directly affected by violations of the land use ordinances. H.B. 2605, H.D. 2, PROPOSED S.D. 1 thereby seeks to make an internet hosting platform financially responsible for the content (or lack of content) of any online advertisement, and seeks to financially penalize the internet platform for the actions or inactions of other people and entities using the internet platform, not for anything that the internet platform has done. .

Moreover, the definition of a “transient accommodations broker” which is currently set forth in H.R.S. 237D-1 is extremely broad, and would thus include many persons and companies in addition to internet hosting platforms:

“Transient accommodations broker” means **any person or entity**, including but not limited to persons **who operate online websites, online travel agencies, or online booking agencies, that offers, lists, advertises, or accepts reservations** or collects whole or partial payment for transient accommodations or resort time share vacation interests, units, or plans.

Persons and companies “who operate online websites, online travel agencies, or online booking agencies” would include newspapers, realtors, travel agents and others. All such persons and companies would be subjected to “disgorgement of profits” and class C felony criminal penalties for “engaging in business” with an operator or plan manager who “is not in compliance with all state laws and county ordinances”. This overbroad scope thus threatens ordinary companies and persons, as well as internet hosting platforms, for the actions of people who they do not control. Such penalties are unfair and unreasonable.

Section 15 of H.B. 2605, H.D. 2, PROPOSED S.D. 1 adds a new section to Chapter 481B, Hawaii Revised Statutes, to state, in pertinent part, that:

“(a) It shall be unlawful for a hosting platform to provide, and collect a fee for, booking services in connection with transient vacation rentals located in the State if those transient vacation rentals are not lawfully certified, registered, or permitted as a transient vacation rental under applicable county ordinance at the time the transient vacation rental is rented. ***

(d) As used in this section:

"Booking service" means any reservation or payment service provided by a person or entity that facilitates a transient vacation rental transaction between an operator and a prospective renter, and for which the person or entity collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation or payment services provided for the transient vacation rental transaction.”

This section purports to impose liability on all hosting platforms, regardless of whether they collect tax or not, for providing “booking services” in connection with transient vacation rentals. Holding internet platforms liable for “booking services” also violates Section 230 of the CDA

H.B. 2605, H.D. 2, PROPOSED S.D. 1 impermissibly violates the SCA.

The new proposed section (g) under both proposed provisions of Sections 8 and 9 of H.B. 2605, H.D. 2, PROPOSED S.D. 1 (applicable to both Sections 237 and 237D) provides that:

“(g) **A registered tax collection agent shall file periodic returns** in accordance with section 237-30 [or section 237-D6] and annual returns in accordance with section 237-33 [or section 237-D7]. **Each periodic return** required under section 237-30 [or section 237-D6] **shall be accompanied by an electronic cover sheet**, in a form prescribed by the department that **includes the following information:**

(1) For each operator and plan manager on whose behalf the tax collection agent is required to report, collect, and pay over taxes due under this chapter, the **operator's or plan manager's name, address, and license identification number [transient accommodations registration identification number];** and

(2) **For each transient accommodation**, rented through the registered tax collection agent or the website or platform designated in the certificate of registration issued pursuant to chapter 237D, for which taxes are being remitted pursuant to this chapter:

(A) **The address of the transient accommodation;**

(B) **The number of nights that each transient accommodation was rented and the rate or price at which each transient accommodation was rented;** and

(C) 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.

Upon request by the planning director or mayor of the applicable county, a registered tax collection agent shall disclose any of the information contained in the returns or cover sheets required by this subsection to the planning director or any county official designated by the mayor to receive the information. Notwithstanding any law to the contrary, including section 237-34 [237D-13], the planning director and county official designated to receive the information pursuant to this subsection may examine and copy the returns and cover sheets to ensure compliance with this section, state tax laws and county tax ordinances, and any applicable land use laws and ordinances. (Emphasis added.)”

In other words, proposed section (g), in particular, requires a hosting platform acting as a tax collection agent to provide the director of taxation with a periodic report, or information upon demand, including: (1) the address of each listing on the platform; and (2) the number of nights that each transient accommodation was rented and the rate or price at which each transient accommodation was rented. As a result, H.B. 2605, H.D. 2, PROPOSED S.D. 1 requires an internet platform to disclose the internet platform's private information about its users without a subpoena or any legal process. The rental address and financial information regarding a transient accommodation unit are private information held by an internet platform and governed by the SCA. Thus, H.B. 2605, H.D. 2, PROPOSED S.D. 1 violates the SCA, is preempted, and is unenforceable.

H.B. 2605, H.D. 2, PROPOSED S.D. 1 impermissibly violates the U.S. Constitution and the Hawaii State Constitution.

In addition, H.B. 2605, H.D. 2, PROPOSED S.D. 1 is invalid under both the Fourth Amendment to the U.S. Constitution and Article I, Section 7 of the Hawaii State Constitution. Specifically, the Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]”¹ The U.S. Supreme Court has held that “searches conducted outside the judicial process, without prior approval by a judge or a magistrate judge, are *per se* unreasonable . . . subject only to a few specifically established and well-delineated exceptions.” *City of Los Angeles, Calif. v. Patel*, 135 S.Ct. 2443, 2452 (2015). This rule “applies to commercial premises as well as to homes.” *Id.*

In *Patel*, the Supreme Court considered a municipal code provision requiring hotel operators to make their guest records available to police on demand or face criminal penalties. The provision required hotel operators to record their guests' name and address, the number of people in each guest's party, the make, model, and license plate number of any guest's vehicle parked on hotel property, the guest's date and time of arrival and scheduled departure date, the room number assigned to the guest, the rate charged and amount collected for the room, and the method of payment. The *Patel* Court held that the provision violated the Fourth Amendment and was invalid.

Although the *Patel* code provision involved a *criminal* penalty, as opposed a *civil* penalty, that distinction makes no difference. Courts have held that “Fourth Amendment protections apply in both civil and criminal contexts.” *Bernstein v. Roberts*, 405 F.Supp.2d 34, 39 (D.D.C. 2005); *Camara v. Mun. Court of City & County of San Francisco*, 387 U.S. 523, 530, 87 S.Ct. 1727, 1732, 18 L.Ed.2d 930 (1967) (“It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior.”).

¹ Because Article I, Section 7 of the Hawaii State Constitution largely tracks the language of the Fourth Amendment, and because Article I, Section 7 affords even greater protections than the Fourth Amendment, the discussion of the Fourth Amendment is also applicable to Article I, Section 7 of the Hawaii State Constitution. *State v. Curtis*, 139 Hawaii 486, 497, 394 P.3d 716, 727 (2017) (“We have often recognized broader protections ‘[i]n the area of searches and seizures under article I, section 7’ than our federal counterparts.”)

Two courts have recently applied the holding of *Patel* to civil situations. In *Landon v. City of Flint*, No. CV 16-11061, 2016 WL 7661390, (E.D. Mich. Nov. 30, 2016), *report and recommendation adopted*, No. CV 16-11061, 2017 WL 345854 (E.D. Mich. Jan. 24, 2017), the court enjoined an ordinance requiring a rental property owner to allow a warrantless inspection of a rental unit or face a civil penalty. The court held the ordinance was invalid because it did not require a warrant or precompliance review before a routine inspection. Similarly, in *Garner Properties & Mgmt. v. Charter Twp. of Redford*, No. 15-14100, 2017 WL 3412080 (E.D. Mich. Aug. 8, 2017), the court found that an ordinance allowing a warrantless inspection to determine whether a rental property was up to code, and involving a \$75 civil fine, was invalid because it did not require precompliance review. Similarly, H.B. 2605, H.D. 2, PROPOSED S.D. 1 violates the Fourth Amendment by requiring an internet platform to disclose private, protected information without a warrant.

Conclusion.

For the foregoing reasons, the problematic language in H.B. 2605, H.D. 2, PROPOSED S.D. 1 renders it invalid. We therefore urge that H.B. 2605, H.D. 2, PROPOSED S.D. 1 be held. Thank you for your consideration.

Very truly yours,



DAVID M. LOUIE

JOSEPH A. STEWART

for

KOBAYASHI SUGITA & GODA, LLP



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Testimony in Support of HB 2605 HD 2, Proposed SD 1

March 20, 2018

The Honorable Glenn Wakai
Chair, Committee on Economic Development, Tourism, and Technology
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street, Room 216
Honolulu, Hawaii 96813-2425

The Honorable Clarence K. Nishihara
Chair, Committee on Public Safety, Intergovernmental, and Military Affairs
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street, Room 214
Honolulu, Hawaii 96813-2425

Dear Honorable Chair Wakai and Honorable Members of the Senate Committee on Economic Development, Tourism, and Technology, and Honorable Chair Nishihara and Honorable Members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs:

Hilton strongly supports HB 2605 HD 2, proposed SD 1. This bill, like SB 2963 SD 1, advances enforcement of existing state laws and county land use ordinances and is legally sound.

**HB 2605 HD 2, Proposed SD 1, Advances Enforcement
of Existing State Laws and County Land Use Ordinances**

Passage of HB 2605 HD 2, proposed SD 1, is important in order to advance, and not hinder, the enforcement of existing State laws and County land use ordinances. Significantly, the enforcement provisions of the bill apply to **all** transient accommodations brokers, whether or not they enter into tax collection agreements. The Counties have testified in strong support of similar enforcement provisions in SB 2963 SD 1 and SB 2999:





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- City and County of Honolulu, Department of Permitting and Planning: “[SB 2963 Proposed SD 1] introduces significant new tools to help the counties better administer and enforce appropriate regulations on short-term vacation rentals, particularly in our residential neighborhoods.”
- County of Kauai, Planning Department: “The improved County zoning authority in [SB 2963 Proposed SD 1] will help us to hold illegal vacation rental operators responsible. We believe it will have a positive trickle down impact on preserving our local neighborhoods, keeping resort uses in resort neighborhoods, preserving our residential housing stock, and minimizing procedural barriers to insure timely due process.”
- County of Hawaii, Planning Department: “Although Hawaii County does not have a transient vacation rental ordinance at this time, SB 2963 will support our eventual enforcement of illegal vacation units[.]”
- County of Maui, Department of Planning (on SB 2999): “From a land use perspective, we appreciate that this bill addresses the counties’ concerns and have incorporated specific requirements therein. . . All of the enforcement tools will aid us in providing compliance with local laws[.]”

HB 2605 HD 2, Proposed SD 1, Is Legally Sound

HB 2605 HD 2, proposed SD 1, is modeled after San Francisco’s Ordinance 178-16 (effective September 1, 2016), which made it a misdemeanor for hosting platforms to collect booking fees on illegal rentals. Airbnb and Homeaway challenged Ordinance 178-16 based on the federal Communications Decency Act, strict criminal liability, and the First Amendment. On November 8, 2016, the U.S. District Court for the Northern District of California ruled **against** Airbnb and Homeaway, finding that the platforms were unlikely to prevail on the merits of their legal challenges.

On March 9, 2018, the U.S. District Court for the Central District of California issued another similar ruling against Homeaway. Homeaway had challenged Santa Monica’s Ordinance Number 2535, which prohibited certain short-term housing rentals, on the basis of the federal Communications Decency Act and the First Amendment, among other things. Citing the San Francisco case with approval, the district court found, “Like the San Francisco ordinance, the [Santa Monica] Ordinance does not penalize [Homeaway’s] publishing activities; rather, **it seeks to keep them from facilitating business transactions on their sites that violate the law. This type of regulation falls outside of the scope of CDA protections**” (emphasis added).

HB 2605 HD 2, proposed SD 1, is likely to withstand any similar legal challenges by Airbnb.





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Residents of Hawaii Deserve As Much Respect for Their Communities and Local Laws as the Residents of San Francisco

Airbnb has represented that it supports the “intent” of similar bill SB 2963 SD 1 and desires to be a good partner to the State. A recent Reuters interview with Airbnb’s Chief Executive Officer, Brian Chesky,¹ describes Airbnb’s evolution from a culture of taking no responsibility for what happens on its platform to changing its point of view and working to understand how Airbnb’s business can alter neighborhoods and housing markets. The interview concluded by saying that Airbnb is coming to terms with its responsibility.

In its settlement with San Francisco, Airbnb voluntarily agreed to a number of requirements related to registration, data reporting, and transparency, as well as mandatory verification of compliance and delisting of illegal units. Airbnb should also take responsibility for its impacts in Hawaii. The residents of Hawaii deserve as much respect for their communities and local laws as the residents of San Francisco.

Conclusion

In addition to facilitating collection of tax revenues, HB 2605 HD 2, proposed SD 1, advances enforcement of local land use laws and provides for more significant penalties for violations. The enforcement provisions of HB 2605 HD 2, proposed SD 1, represent the first step for hosting platforms in taking responsibility for the impacts of their business on Hawaii communities and complying with the rule of law in Hawaii.

Thank you for your consideration of Hilton’s position.

Mahalo nui loa,

Gerard C. Gibson
Vice President
Hilton Hawaii

¹ See <https://www.reuters.com/article/us-airbnb-expansion-chesky/airbnb-ceo-pledges-to-take-more-responsibility-for-impact-to-housing-idUSKCN1G708C>



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March 19, 2018

Senator Glenn Wakai, Chair
Senate Committee on Economic Development, Tourism and Technology
Senator Clarence Nishihara, Chair
Senate Committee on Public Safety, Intergovernmental and Military Affairs
Hawaii State Legislature

Dear Senator Wakai, Senator Nishihara and Members of the Economic Development, Tourism and Technology, and Public Safety, Intergovernmental and Military Affairs Committees,

Testimony in Support of HB2605 HD2

The Kohala Coast Resort Association (KCRA) is in support of HB2605 HD2 providing financial support to the counties to assist with establishing a specified property tax rate, as well as allowing enforcement funds for short term vacation rentals. We believe that all vacation accommodations should be treated equitably by taxing and governing authorities and hope this bill will help assist the counties with those initiatives.

KCRA is a collection of master-planned resorts and hotels situated north of the airport which represents more than 3,500 hotel accommodations and an equal number of resort residential units. This is approximately 35 percent of the accommodations available on the Island of Hawai`i. KCRA member properties annually pay more than \$20 million in TAT and \$20 million in GET.

We encourage your support of this measure.

Sincerely,

A handwritten signature in black ink that reads "Stephanie P. Donoho". The signature is written in a cursive, flowing style.

Stephanie Donoho
Administrative Director

March 21, 2018

TO: Senate Committee on Economic Development, Tourism and Technology
The Honorable Glenn Wakai, Chair
The Honorable Brian T. Taniguchi, Vice Chair

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
The Honorable Clarence K. Nishihara, Chair
The Honorable Glenn Wakai, Vice Chair

FROM: Amanda Pedigo, Vice President, Government and Corporate Affairs
Expedia, Inc.

Dear Chairman Wakai, Chairman Nishihara and distinguished members of the Senate Committee on Economic Development, Tourism and Technology Committees, and Senate Committee on Public Safety, Intergovernmental, and Military Affairs,

While Expedia recognizes the Legislature's desire to find a reasonable way to collect taxes that are due to the State and *supports the tax amnesty provision* in this bill, we, unfortunately, cannot support the proposed SD1 to HB2605, HD2. Our concerns are like those expressed during consideration of SB2963.

HB2605 includes provisions that violate federal law and would not withstand judicial scrutiny. It also includes provisions that are simply bad policy that will both impact the financial benefits that the state enjoys from having a robust vacation rental market and lead to some portion of vacations rentals going "underground" to avoid onerous regulation.

We explain those concerns in more detail below, but first it is important to recognize the benefits that the vacation rental industry provide—and that online vacation rental advertising platforms are not all the same.

First, we commissioned a study of the economic impact of transient vacation rental and found that the vacation rental industry in Hawaii contributes significantly to Hawaii's economy.¹

- ❖ Last year, over 608,000 visitors spent an average of eight days in vacation rentals.
- ❖ These visitors spent over \$444 million on lodging and over \$475 million on other expenses such as food, entertainment, and souvenirs for total expenditures of nearly \$920 million. Losing those dollars would impact thousands of workers and hundreds of small businesses, in addition to the homeowners who rent their homes.
- ❖ A large number of families who prefer to stay in vacation rentals will not stay in traditional resort accommodations for their vacations. They want to rent a home that has multiple bedrooms, a kitchen, a swimming pool, and a yard for their kids. For that

¹ Completed by Hospitality Advisors LLC, Joseph M. Toy, President and CEO, Honolulu, Hawaii.

growing segment of the tourist population, a hotel is not a suitable substitute for a vacation rental.

- ❖ And even if vacation rental visitors were to switch to traditional resort lodging, there would *not be enough hotel rooms* to accommodate them. If traditional options were at an annual 85% capacity (which is widely viewed as the maximum sustainable capacity for a hotel), there would still be demand for more than *2.5 million guest nights left unmet*.
- ❖ Given the average length of stay of each vacation rental user in Hawaii is about eight days, the result is that nearly *320,000 visitors would have no place to stay*.
- ❖ While that might mean less crowded beaches, it would also mean *over \$430 million not spent in Hawaii on lodging and other local goods and services, causing a loss of over \$37 million in TAT and GET*. It would also result in lost jobs and potential loss of airlift into Hawaii.

Second, we'd like to tell you about HomeAway. For nearly three decades, HomeAway platforms have been the leaders in offering unique, family-focused vacation experiences for travelers. We take immense pride in our long-standing commitment to our local homeowners and their small business partners, as well as the millions of families that have used vacation rentals to experience Hawaii in a unique way.

- ❖ HomeAway/VBRO started out as a subscription service, and the majority of our owners have listing subscriptions today. That means owners pay only an annual fee for posting a property on our sites. For those bookings, the homeowner does not pay a fee per rental.
- ❖ Most of our owners include taxes as a line item cost in their listing and collect taxes directly, without HomeAway/VRBO doing so for them. We have no reason to believe that the owners—having collected taxes—do not remit them.
- ❖ The typical HomeAway/VBRO guest is a 47-year-old woman traveling with a family of four.
- ❖ The average stay for a HomeAway/VBRO guest is 6-7 days.
- ❖ The typical HomeAway/VBRO owner offers part-time use of their second home when they themselves are not in residence. There is no reason to expect these owners to make their homes available on the long-term rental market.

Hawaii would lose much of the benefit of vacation rentals by passing SB 2963. It would also invite a legal challenge because significant sections of SB2963 violate federal laws. HomeAway and other hosting platforms have filed lawsuits in other jurisdictions based on these legal grounds. By summarizing the requirements of the Stored Communications Act and Section 230 of the Communications Decency Act, HomeAway hopes to persuade Hawaii to pass a workable state law that does not violate federal law.

Stored Communications Act – Privacy of Personal Information

HomeAway must protect the personal information of the homeowners and travelers who use its websites. A federal law, the Stored Communications Act (SCA), sets forth the legal process required before HomeAway may respond to a request for owner or traveler information from a governmental entity. Notably, the SCA provides a private cause of action to individuals whose information is provided to a governmental entity in violation of the statute's requirements. 18 U.S.C. § 2707. Should HomeAway fail to abide by the SCA's legal requirements for disclosing information, it risks incurring civil liability to the individuals whose information is disclosed.

Paragraph (g) of Sections 8 and 9 would require a platform that is a “registered tax collection agent” to file “periodic returns” to the State that include personal, private information about homeowners who are listing their property, as well as information about each transaction they engaged in. *Absolutely no form of legal process is afforded to either the homeowners whose information is to be disclosed or to HomeAway.* Rather, HomeAway must simply file the reports as required.

Those provisions of SB2963 violate the SCA. To protect the privacy of online communications, Congress passed the SCA, which “creates a set of Fourth Amendment-like privacy protections by statute, regulating the relationship between government investigators and service providers in possession of users’ private information.” Orin S. Kerr, *A User’s Guide to the Stored Communications Act, and a Legislator’s Guide to Amending It*, 72 Geo. Wash. L. Rev. 1208, 1212 (2004). “The Act reflects Congress’s judgment that users have a legitimate interest in the confidentiality of communications in electronic storage at a communications facility.” *Theofel v. Farey-Jones*, 359 F.3d 1066, 1072–73 (9th Cir. 2004).

The SCA restricts government entities’ ability to compel disclosure of the contents of users’ communications and information from an electronic communications service (ECS) or a remote computing service (RCS). *See, e.g.*, 18 U.S.C. § 2703(a)-(c); *see also id.* § 2702(a). In simple terms, an ECS is any service that allows users to communicate electronically with one another, while a RCS is any service that stores or processes information submitted by users. *See* 18 U.S.C. §§ 2510(15), 2711(2). A single service may satisfy both definitions.

HomeAway is both an ECS and a RCS. HomeAway is fundamentally a communications platform and thus qualifies as an ECS because it enables communications between listing owners and travelers through the secured communication feature it provides on its websites. Indeed, most reservations are made through direct online communications between an owner and traveler. HomeAway is also a RCS because it stores and processes information provided by users, including communications, pictures of properties, and listing information provided by owners.

A federal court in Portland held that HomeAway was an ECS and RCS. *HomeAway.com, Inc. v. City of Portland* (D. Or. Mar. 20, 2017), No. 3:17-CV-91. And a federal court in Washington, D.C., recently held that Airbnb, which provides a similar secured communications service, is an ESC. *In re United States for an Order Pursuant to 18 U.S.C. § 2705(b)* (D.D.C.

Jan. 30, 2018, No. MC-17-2490-BAH), 2018 WL 692923. An entity that is either an ECS or RCS is obligated to follow the SCA’s requirements.

The SCA limits the forms of process a government entity may use to obtain information from an ECS or RCS, depending on the type of information sought. It divides electronic information into two distinct categories: first, the *contents* of users’ communications, 18 U.S.C. § 2703(a)–(b), and second, non-content customer *records*, *id.* § 2703(c). Within the second category, the SCA recognizes a “subset of noncontent records (sometimes known as ‘basic subscriber information’)” consisting *solely* of the customer’s name, address, phone number, and other basic information. 18 U.S.C. § 2703(c)(2).

When a government entity seeks the *contents* of communications, the protections of the SCA are at their highest. *See* 18 U.S.C. § 2703(a)–(b). A warrant based upon probable cause is sufficient to obtain the contents of communications, and is required for communications that have been in the electronic storage of an ECS for 180 days or less. *Id.* § 2703(a), (b)(1)(A), (c)(1)(A). If the government seeks non-content customer “records,” the SCA provides somewhat more limited protections. *See* 18 U.S.C. § 2703(c). But a subpoena is still insufficient to obtain most non-content records. For such records, the government generally must either obtain a court order authorizing disclosure, or demonstrate that the customer consented to disclosure. *Id.* § 2703(c)(1)(B)–(C). Section 2703 permits the disclosure of basic information only—which, as explained above, is limited to a customer’s name and address, and other discrete categories—if the government employs an administrative, grand jury, or trial subpoena. *Id.* § 2703(c)(2). Thus, in Portland, the court held that the SCA barred the City’s attempt to obtain user information from HomeAway without obtaining an appropriate subpoena or court order.

What this all means is that Paragraph (g), which would require HomeAway to hand over private homeowner information and transactional data particular to each owner *without any kind of legal process at all*, violates the process established by the SCA to protect individuals’ privacy.²

Communications Decency Act – Ensuring eCommerce Survives and Thrives

Section 230 of the Communications Decency Act (CDA) provides that “No 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). The law bars liability “under any ... local law that is inconsistent with this section.” *Id.* § 230(e)(3). Section 230 provides broad immunity to online providers like HomeAway against attempts to impose obligations stemming from the publication of third-party user listings and advertisements. Put simply, Section 230 “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

² Although the Congress that enacted the SCA in 1986 believed that it was *supplementing* the protections of the Fourth Amendment, it now is well established that the Fourth Amendment extends to electronic communications and protects against government searches. The U.S. Supreme Court has warned against allowing technological advances to “erode the privacy guaranteed by the Fourth Amendment.” *Kyllo v. United States*, 533 U.S. 27, 34 (2001). Paragraph (g) also violates the privacy protections of the Fourth Amendment.

*3 (9th Cir. May 31, 2016). In contrast, SB2963 punishes websites for material posted by someone else.

Paragraph (g) of Sections 8 and 9 would require HomeAway, prior to publishing an advertisement, to require the homeowner (i) to provide their transient accommodations number and local contact information—and include that information in the advertisement; (ii) to verify that they have complied with state and county laws; and (iii) to provide a statement confirming compliance. Plus, HomeAway must remove any advertisements for which it cannot obtain those items, or upon notice from a state or county governmental authority.

Section 15, makes it unlawful for a hosting platform to collect a fee for “booking services” for any “illegal” vacation rentals.

Section 10 makes it unlawful for HomeAway to “engage in business” with a homeowner who is not “in compliance with all state laws and county ordinances.” How is HomeAway supposed to know that?

Should HomeAway fail to follow these onerous and operationally crippling provisions, it is exposed to a fine of *at least* \$25,000, which, if imposed for every listing, would quickly reach into millions of dollars. There is no bad faith or knowledge requirement before fines can be imposed. This also violates federal law.

All three of the provisions listed above impose liability on HomeAway for content provided by *third-party* homeowners and property managers. The CDA flatly prohibits that result.

By way of example, in January 2017, the City of Portland, Oregon, passed an ordinance that expressly imposed liability on hosting platforms for advertising unregistered short-term rentals. Portland City Code 6.04.060 (platforms may not “advertise or otherwise represent that an accessory Short-Term Rental is available for Occupancy unless” the “Operator has registered” with the City). After HomeAway challenged that provision as preempted by Section 230, the City conceded in a court filing that it could not defend that provision. *HomeAway.com Inc. v. City of Portland*, No. 3:17-cv-00091 MO (D. Or.), Dkt. No. 30, p. 5 (“The City acknowledges that Section 230 ... prevents the City from holding HomeAway liable for its hosts’ failure to post their permit information in advertisements hosted by HomeAway.”).

The CDA’s immunity applies regardless of whether the online provider reviews, edits or otherwise processes the third-party content before it is posted. “[L]awsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred.” *Dowbenko v. Google Inc.*, 582 Fed. Appx. 801, 805 (11th Cir. 2014); *see also Sulla v. Horowitz*, No. CIV 12-00449 SOM, 2012 WL 4758163, at *2 (D. Haw. Oct. 4, 2012). Any effort to require HomeAway to remove or prohibit listings would violate Section 230, because doing so would be to treat HomeAway as the publisher or speaker of content created by third parties, not created by HomeAway.

* * * * *

The vacation rental industry plays a vital role in Hawaii's economy. We would like to work with the state and local governments to modernize the regulations of this important economic sector. We note that the City and County of Honolulu considered several measures last year on transient vacation rentals that are being prepared for consideration by the Planning Commission. We want to work to protect communities while also protecting the State's economy. This legislation does not meet those goals.

Thank you for the opportunity to share this testimony.

HB-2605-HD-2

Submitted on: 3/20/2018 12:08:42 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Denise Wardlow	Testifying for The Westin Princeville Ocean Resort Villas	Support	No

Comments:

Coalition for Equal Taxation

On behalf of the Coalition for Equal Taxation, we respectfully **OPPOSE HB2605** and request that this Bill be held.

We also respectfully draw the Legislature's attention that there are many law abiding transient accommodation operators that have operated in the State of Hawaii for years. Operators have appropriately obtained registration licensing with the Department of Taxation, pay TAT/GET, file personal income tax returns and abide by local zoning ordinances. All counties have designated zones where transient accommodation is legally allowed.

This Bill also adversely impacts many law abiding TA operators as it contains provisions that are not consistent with Federal law, U.S. Constitution, Hawaii Constitution, Hawaii Taxpayer Bill of Rights.

Tax Collection:

Your DoTAX has outlined in their annual report their collection efforts regarding TA which are indeed effective. Your DoTAX already has all tools necessary to apprehend and enforce tax compliance. Your DoTAX has all tools, access to information, both within the State and from the Federal IRS, to enforce tax compliance.

County Zoning Enforcement:

The County of Honolulu will review four proposed Ordinances relating to TA/Short term rentals in July of 2018. The County of Hawaii is in the process of forming their regulations. This Bill contains many provisions relative to expanding the counties' authority to criminalize zoning violations. This includes seizing a person's home, excessive fines, charges of a Class C Felony, and forgoing due process. While we understand that violations are an issue to be addresses, what is proposed in this Bill is excessively punitive.

This Bill also requires platforms to provide to the counties private identity and financial information of operators who advertise with them. Many who advocate this are dismissive to the gravity of it.

Hawaii Revised Statute governs the conduct of the personnel at the Department of Taxation regarding this information:

§237D-13 Disclosure of returns unlawful; destruction of returns. (a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, *shall be confidential*. It shall be *unlawful for any person* or any officer or employee of the State, including the auditor or the auditor's agent *with regard to tax return information obtained pursuant to section 23-5(a), to intentionally make known information imparted by any tax return or return information* filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully *permit any return, return information, or report so made, or any copy thereof, to be seen or examined by* any person; Any violation of this subsection shall be a *class C felony*.

Whether it is the Federal IRS or the 50 states tax departments, there are requirements of confidentiality of taxpayer information. This is not unique to Hawaii.

And yet this Bill requires the platform to provide the same information to the county that if a state official provided they would be guilty of a Class C Felony. Further, the platforms have testified that on even a wider scope, by Federal law they are not permitted nor required to disclose such information. It should also be noted, there is case law that a government cannot require of another entity to do something which they themselves cannot legally do.

This Bill suggests that if a platform obtains a "consent," that this would be a cure for the violations. A standard form "agreement of term" between a platform and an operator should not include a waiver of constitutional rights to privacy. We also point out that the government of Hawaii has given themselves an even higher standard of privacy, with the requirement of *affirmative steps* in Article 1 of the Hawaii Constitution:

RIGHT TO PRIVACY Section 6. The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right. [Add Const Con 1978 and election Nov 7, 1978]

Phasing out of non-conforming and conforming uses of transient accommodations. This refers to legally operating transient accommodations. If the counties are trying to address TA being conducted in locations where it is not allowed, it is unclear why this Bill seems to authorize the counties to also do away with legal operators. Again, we ask the state to recognize the many, many law abiding operators who are being adversely impacted in this Bill.

This Bill has serious legal challenges and is excessively punitive. We respectfully request that this Bill be deferred.

HB-2605-HD-2

Submitted on: 3/18/2018 3:09:27 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Foster	Testifying for Hawaii Advocates For consumer Rights	Support	No

Comments:

The Twenty-Ninth Legislature
Regular Session of 2018

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 K. Nishihara, Chair

Senator Glenn Wakai, Vice Chair

State Capitol, Conference Room 414

Wednesday, March 21, 2018; 1:45 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2605 H.D. 2
RELATING TO TRANSIENT ACCOMMODATIONS**

The ILWU Local 142 supports H.B. 2605 H.D. 2, which establishes a one-time amnesty program for certain delinquent transient accommodations and general excise tax obligations and allows transient accommodations brokers to register as a tax collection agent for its operators and plan managers. The bill also requires said registered tax collection agents to inquire with their operators and plan managers whether the transient accommodation is in compliance with all state and county land use and tax laws; to provide verification of compliance with state and county land use laws; and to remove a transient accommodation advertisement upon notice that the property is not in compliance with state law or county ordinance.

Furthermore, the bill makes it unlawful for transient accommodations brokers to engage in business with operators of plan managers that are not in compliance with all state laws and county ordinances; authorizes counties to disgorge profits obtained through unfair or unlawful business practices and to adopt ordinances to amortize or phase out transient vacation rental units; allocates an unspecified percentage of GET and TAT 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 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.

We believe this measure's attempt to curb the spread of illegal vacation rentals and make operators more transparent, accountable, and fair to our workforce and communities. Moreover, the ILWU supports the implementation of a regulatory framework that ensures transient accommodation and short-term vacation rental operators pay applicable taxes and operate in compliance with all pertinent State and county laws.

The ILWU urges passage of H.B. 2605 H.D. 2. Thank you for the opportunity to share our views on this matter.

HB-2605-HD-2

Submitted on: 3/20/2018 9:43:08 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gregg Nelson	Testifying for Napili Kai Beach Resort	Support	No

Comments:

Dear Chair and Committee Members,

I am the general manager of a resort on the west side of Maui and unable to testify before you in person on this important matter. Instead, please accept my written testimony in support of HB2605. I represent 160 staff members at our resort and we all are in support of this bill. This is the last opportunity to address needed regulation and oversight of vacation rental units throughout our State. Attempts have failed in the past on similar measures and significant tax revenue opportunities were lost. Now another opportunity is before us and it is up to this Committee and the House to make this piece of legislation a reality. We all are asking you to vote yes on HB2605.

Mahalo

Gregg Nelson

General Manager

Napili Kai Beach Resort

HB-2605-HD-2

Submitted on: 3/20/2018 9:27:29 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeana Jones	Testifying for Hawaii Life Real Estate Brokers	Oppose	No

Comments:

My name is Jeana Jones, and I am a licensed real estate professional. I work for a large real estate company and currently manage over 50 vacation rental properties on the Hilo-side of the Big Island. Vacation rental homes are vitally important for this area in particular, which is mostly zoned AG, due to the lack of hotels nearby. The economic impact if the new bill(s) are passed would be astounding. Tourism on this side of the island would simply die, along with many local businesses that rely on those tourist dollars to stay afloat. We operate with a high degree of integrity and I am a very involved property manager.

I employ dozens of contractors who make a significantly better income here now than they would if they were forced to work in the hotel industry.

Many corporations and companies use our vacation rentals for business. One global company in particular has spent hundreds of thousands of dollars with us in the past few years alone.

In regards to the homes that I manage, we are simply the caretakers of our owner's future retirement homes, or their 2nd homes - their vacation home. These homes would never be available as long term rentals, as my owners come at least once a year, if not for the entire winter. Don't make this an issue of not-enough-long-term-rental-availability. That is a completely separate issue.

The vacation rentals that I manage alone for this side of the Big Island generate nearly \$10M to the local economy annually. That doesn't include the owners that visit or winter here who also contribute, and they pay their taxes.

We keep all the homes very well-maintained, much more so than long-term rentals. We do routine maintenance. All homes have landscaping service multiple times per month. All are treated for pests regularly. And we have the best guests, many who come year after year and become like family. And we have great neighbors!

A few key points by our industry leaders at Airbnb:

As the state and counties look to take action on short-term rentals, it's important that they realize the significant impact their decisions will have on the future of tourism in Hawaii, on the state's economy and on the people and businesses who rely on visitors to stay afloat.

Hawaii has long been a top destination for visitors from all over the world. While many opt to stay in traditional hotels and resorts, visitors are also increasingly interested in a more authentic and local experience. Our average visitor is vacationing in Hawaii for the fifth time. They have ventured out from the resort areas and have discovered areas of the islands they enjoy.

Some choose to stay in alternative accommodations rather than hotels. In doing so, they support our economy with hundreds of millions of dollars in spending. In addition, they generate tens of millions of dollars in potential tax revenue for the state — funding that Hawaii desperately needs.

In a recently-conducted analysis of the alternative accommodations industry on behalf of Airbnb, the analysis yielded some important findings about guests' contribution to Hawaii's economy:

>> Alternative accommodations generated over \$120 million in general excise and transient accommodations taxes statewide in 2016 (lodging and non-lodging spending). If the state had a system in place to allow platforms such as Airbnb to collect and remit these taxes from operators, this tax revenue would be more fully and effectively captured.

>> Visitors using Airbnb, just the third-largest platform in Hawaii, spent an estimated \$649 million in 2016, including \$484 million on non-lodging expenditures such as food and beverages, contributing significantly to the success of local businesses and restaurants outside of traditional visitor destinations like Waikiki.

>> Airlift to Hawaii grew by 28.6 percent between 2011-2016, yet hotel inventory has been growing at a much slower rate. As a result, the additional elastic supply of alternative accommodations available through platforms such as Airbnb has supported the increased arrivals and visitor spending.

The state is grappling with budget deficits and as was recently reported, Gov. David Ige has already counted on tens of millions of dollars from alternative accommodation platforms to fill the gap. While short-term rental operators are eager for a mechanism to more easily pay their taxes and the state has been seeking a solution to the long-standing problem of effectively capturing tax revenue from this industry, the current tax proposal at the Legislature is overly punitive, unworkable and cumbersome, according to former Attorney General David Louie.

What's more, as the counties consider updating their land use regulations for short-term rentals, it's prudent to keep in mind that regulations that severely restrict alternative

accommodations, will most certainly have a negative impact on tourism and our economy. Already, hotels on Oahu are nearly at full capacity with almost 85 percent occupancy rates, and we have record level airlift coming to Hawaii — far exceeding the available inventory of traditional hotels. Without alternative accommodations, visitors will be forced to go to other destinations, blowing a hole in Hawaii's biggest industry.

In addition to the contributions to the economy, more and more residents rely on occasional short-term rentals to supplement their income and keep up with the high cost of living in the islands. Airbnb hosts, much like the guests they welcome, are spending their extra income in the communities where they live, contributing to local businesses.

The substantial economic impact generated in Hawaii by vacation rental platforms such as Airbnb should not be dismissed as state and county leaders debate policies relating to alternative accommodations. Lawmakers and stakeholders should be looking to shape sustainable tourism that benefits all communities, rather than regressive policies that would adversely impact the industry that is the very backbone of our economy.

Please don't kill tourism in Hawaii, especially here on the Hilo side of the Big Island. This bill should really not be considered as a state-wide bill, but each county should be considered individually to meet county-specific needs.

Jeana Jones, Realtor(S)/Property Manager

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TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, County Vacation Rental Enforcement

BILL NUMBER: HB 2605, HD-2

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Provides that a county shall be eligible to receive \$_____ from general revenues for the purpose of enforcing all applicable laws and ordinances relating to transient accommodations and short-term vacation rentals, provided that no funds shall be released to a county until it has satisfactorily complied with specified conditions.

SYNOPSIS: Adds an uncodified section to provide that a county may receive \$_____ to enforce laws and ordinances relating to transient accommodations, if it has:

- (1) Established a real property tax rate that applies only to:
 - (A) Transient accommodations; or
 - (B) Short-term vacation rentals occupied for a period of thirty consecutive days or less;
- (2) Developed a process to expediently issue special use permits to, and collect all applicable taxes from, qualifying properties that are proposed for use as:
 - (A) Transient accommodations; or
 - (B) Short-term vacation rentals occupied for a period of 180 consecutive days or less;
- (3) Established a registry to track compliance by, and any complaints concerning, permittees who receive special use permits pursuant to paragraph (2);
- (4) Established an expedited process for addressing alleged violations of zoning and special use permits laws and ordinances by operators of:
 - (A) Transient accommodations; or
 - (B) Short-term vacation rentals occupied for a period of 180 consecutive days or less;
- (5) Established an expedited process for addressing an appeal filed by a party that was denied a special use permit pursuant to paragraph (2); provided that a county that has not established an expedited process by December 31, 2018, shall establish a process that is functionally equivalent to the contested case hearing process described in section 91-9, HRS;
- (6) Enacted legislation that implements the conditions described in paragraphs (1) through (5); and
- (7) Notified the governor in writing that it has complied with the conditions described in paragraphs (1) through (6).

Requires counties receiving an appropriation under the act to submit a report to the legislature on what it did with the money.

EFFECTIVE DATE: July 1, 2030.

STAFF COMMENTS: Apparently, the Legislature wants the counties to focus on being proactive in enforcing its zoning and land use laws as they relate to vacation rentals.

The remedy proposed in this measure is to hold out a large carrot. If a county gets its proverbial act together and complies with the conditions in this measure, it gets a substantial one-time payout (blank amount now, but was \$1 million in prior bill drafts). Not bad for something the counties should have done anyway if they were serious about enforcing their zoning and land use laws.

Digested 3/19/2018



The Senate
The Twenty-Ninth Legislature
Regular Session of 2018

To: Senator Nishihara, Chair
Senator Wakai, Chair

Senator Wakai, Vice-Chair
Senator Taniguchi, Vice-Chair

Date: Wednesday March 21, 2018 Time: 1:15 p.m.

Place: Conference Room 414

RE: House Bill 2605 SD1, Relating to Transient Accommodations

Chairs Nishihara and Wakai and Members of the Committees:

RBOAA must **OPPOSE** the bill.

RBOAA is an advocate for compliance with all tax regulations and zoning ordinances. HB2605, as written, strips transient accommodation owners of many rights that other taxpayers and property owners are accorded and granted.

RBOAA believes that laws must be consistent with the Hawaii State Constitution and the Taxpayer's Bill of Rights, which are guaranteed to all people. Transient accommodation operators should not be deprived of these fundamental rights.

This Bill provides an amendment granting authority to counties as follows: *“Each county may impose civil fines, in addition to criminal penalties and remedies for disgorgement of all profits and restitution of any money, real property or personal property that was obtained through unfair or unlawful business acts and practices.”*

The counties wish to be granted power to seize money, real property and personal property for violations of county ordinance pertaining to “unfair” (undefined) or unlawful business acts and practices. Current law provides for fines and penalties for code and ordinance violations. The power of the government to seize a person’s money, or real and personal property, should not be granted lightly. The remedy of disgorgement exists currently in the State of Hawaii Penal Codes for felonies such as *murder, kidnapping, extortion, drug trafficking*, etc. Hawaiian law explicitly guards against governmental forfeitures that are grossly disproportionate to the nature and severity of the owner’s conduct.

RBOAA believes it is inappropriate to impose the same consequences as conviction of serious felonies upon those who violate county ordinances. We ask that the Committee strike this language from this Bill.

This Bill provides for confidential tax information to be inappropriately shared with County personnel. If the DoT were to pass this information to the County, they would be guilty of a Felony. Since the counties do not administer the tax collection function that the Department of Taxation does, it is not appropriate that they be deemed entitled to private information of taxpayers. This provision is over-reaching and violates taxpayers' rights to confidentiality and privacy. Further, it creates an inconsistency in tax policy by divulging information on only one form of taxpayer, i.e. taxpayers collecting transient accommodation tax, and is therefore discriminatory in nature.

Recommendation: Remove the reference to 1099.

Tax laws not uniformly applied: The Department of Taxation has established rules for tax compliance that ALL businesses, regardless of nature, abide by. HB2605 lacks uniformity as it requires the collection of taxes by a tax agent and is, therefore, discriminatory in nature. By establishing a new method of tax payment that is unique to one type of business, HB2605 is depriving transient accommodation operators of rights provided to other taxpayers. The State of Hawaii, Department of Taxation Bill of Rights provides for the department's "*pledge that the tax laws will be administered with fairness, uniformity, courtesy and common sense.*"

RBOAA does not object to taxpayers voluntarily using the services of an intermediary to provide tax payment services, but it should be voluntary, not mandatory.

Bill holds operators liable for wrongdoing on the part of agent: The bill provides that if the agent fails to report or pay the taxes on behalf of operators, the operator will be jointly and severally liable for taxes due. It is inappropriate to hold the operator liable for the actions or omissions of the agent who is registered or possessing an agreement with the DOT. Additionally, an operator will not have knowledge of payments between the agent and DOT, leaving the operator responsible for something they have no knowledge or control over.

Agent to turn over to counties, periodic and annual returns, electronic data sheet with information on each TA rented including address, number of nights, price, amount of Tax and 1099 income: The counties do not have the responsibilities of a tax collection department and have no valid claim to review periodic and annual returns nor is there a compelling need for information detailing number of nights, prices and income to determine if zoning compliance is, or is not, taking place. The DOT Bill of Rights provides: "*Taxpayers have a right to be assured that their dealings with the Department of Taxation will be kept confidential. Taxpayers have a right to be assured that their tax returns and tax information will not be disclosed.*" The State of Hawaii Constitution provides "*the legislature shall take affirmative steps to implement the right of the people to privacy*" and "*The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be*



violated.” Operators of TA should not be excluded and disenfranchised from these protections afforded all other taxpayers.

This Bill provides for the tax collection agent to obtain written consent from operators to disclose periodic returns and other information. The Bill should be explicit about what the consent is, as the consent appears to be a waiver of the person’s constitutional right to privacy.

Upon request by a county, agent shall disclose any information in returns or cover sheets to planning director or any county official designated by the mayor. An agent should not be providing confidential tax information any county personnel as they are not designated tax personnel for state TAT or GET receipts. This would violate TA operators of the rights of privacy afforded to other taxpayers. This information should only be obtainable through proper subpoena power.

Requires operators to obtain verification of compliance with written certificate, verification or permit. The counties of CC Honolulu, Kauai and Maui all have designated zones where it is legal to conduct transient accommodation rental. For example, on Maui’s short term rental website page, they note “16,000 units are eligible by zone without obtaining a permit.” Kauai has several thousand units in visitor destination zones, and CC Honolulu has thousands of units in resort zones. It is not practical for each legally zoned operator to obtain a written consent when it is easily identified as operating legally by its zoning category on the applicable zoning map for each county. There needs to be a more practical solution to verification that doesn’t require each operator to request a written consent letter from the counties.

The counties are not equipped to be able to provide such documentation in a timely fashion.

Allows counties to phase-out conforming or non-conforming single family transient vacation rental units in any zoning classification. Phasing out conforming units and possibly, non-conforming units, would equate to a “government taking” and therefore property owners would be entitled to just compensation. It should also be pointed out that to adopt a law that eliminates the conforming use of single family homes in any zoning classification would be a breach of public trust in government who has made this activity legal since the 1960s. Hawaii has developed master planned resort properties that included individually owned homes and condominiums. Owners purchased these properties with the legal right to provide lawful vacation rental as provided by approved zoning for such activity.

The Bill provides for the Counties to charge a person with a Class C Felony for a county zoning infraction. A Class C Felony is an extreme punishment for a zoning violation.

Requires operators to provide to agent a statement of compliance with land use laws and ordinances. This is redundant when other forms of proof are required. It is also unduly burdensome to the counties and operators to prove compliance.

Require broker to publish name of local contact in advertising. This will be confusing to the consumer and worse, lends itself to possible unscrupulous activity against a guest by anyone who impersonates as an on-island contact. Further, this provides no discernable benefit to any party.

Thank you for the opportunity to testify on this measure.

Sincerely,

Neal Halstead
President,
Rental by Owner Awareness Association

Rental By Owner Awareness Association (RBOAA) is a Hawaii non-profit corporation founded in 2011, with over 1000 members. Our mission is to provide Hawaii vacation-rental property owners with information to help them comply with the applicable State and County regulations, support the Hawaii economy by offering visitors choice in accommodation, and advocate for the rights of Hawaii vacation property owners. RBOAA members provide transient vacation rentals in full compliance with existing tax and County regulations. RBOAA fully supports enforcement of existing regulations.

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

Carl Szabo, Vice President and General Counsel
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7485
www.netchoice.org



March 18, 2018

Senator Glenn Wakai, Chair
Senator Clarence K. Nishihara, Chair
Committee on Economic Development, Tourism, and Technology
Committee on Public Safety, Intergovernmental, and Military Affairs
Hawaii Senate

RE: **Opposition to HB 2605 – Limited Residential Lodging and exposing Hawaiian privacy**

Dear Chairs Wakai and Nishihara and members of the joint committee,

We ask that you not move forward with HB 2605.

This bill would:

- impose unworkable state-level requirements on Short-term rental (STR) platforms in Hawaii, and
- force disclosure of private information of Hawaii residents to potentially every state employee

We do, however, agree with reasonable requirements for STR hosts and regularly advocate for such requirements.

Benefits to your constituents of short-term rentals

STR services provide necessary income to many of your constituents. Over 52 percent of hosts nationwide live in low-to-moderate income households. More than 48 percent of the income hosts earn through certain short-term rental services is used to cover household expenses.

Consider, for example, families coming from across the country for graduation ceremonies at University of Hawaii. STR services allow constituents to earn income by sharing their homes.

The presence of STR services also brings new money into areas under-served by hotels. Historically, travelers are not likely to encounter businesses in these under-served parts of Hawaii. Conversely, guests who stay in under-served areas via STR services, bring income to nearby restaurants, grocery stores, and businesses.

Big hotel chains benefit most from HB 2605 passage

Big hotel chains are backing HB 2605 for entirely selfish reasons. Big hotel chains see STRs as a threat to their business model – however, it's not for the reasons you may think.

Presently, the hotel industry enjoys record setting occupancy and pricing. However, the presence of STR services is seen by some in the hotel industry as forcing hotels to keep prices at reasonable levels. For

instance, LaSalle Hotel Properties’s CEO told investors that a law curtailing short-term rental services would allow hotels to boost their prices by eliminating competition.¹

Lower hotel room prices mean that visitors to Hawaii have more money to spend with Hawaiian businesses. Likewise, when your constituents travel, STR services help them find more reasonably priced accommodations.

It’s important to keep STR services and a competitive market as a check on hotel price inflation.

HB 2605 would undermine a key benefit of the internet and would likely be unconstitutional

The internet is an open resource that enables people from all parts of Hawaii to freely communicate with one another and pursue their goals. While some nations discourage user-generated content, the United States created a fertile ground for business models that have transformed the world.

Moreover, this openness is bolstered by Section 230 of the federal Communications Decency Act, which says platforms can’t be held strictly liable for content posted *by others*.

However, HB 2605 fails to recognize Section 230. This not only threatens a core tenet of the internet but is at odds with federal law – resulting in the likely injunction of the HB 2605.

HB 2605 exposes the privacy of Hawaii residents to potentially all state employees

The 4th Amendment of the US Constitution protects Hawaii citizens from unlawful search and seizure is a core privacy protection.

Unfortunately, HB 2605 ignores this privacy protection and instead requires platforms to disclose records and information about hosts to state employees. And this disclosure does not require the state’s employees to first obtain a warrant.

This not only exposes the operating procedures and income of businesses but could also expose the privacy of Hawaiian residents using the platform.

The hotel industry has successfully defeated in court disclosure mandates like HB 2605. When the city of Los Angeles demanded that a hotels proprietary business records, the hotel industry fought back in court – ultimately winning at the US Supreme Court (*see In re Patel*, 576 U. S. ____ (2015)). To protect this court ruling, we could see the hotel industry opposing HB 2605. And if HB 2605 is passed, Hawaii would likely see a similar court outcome.

Legal arguments aside, HB 2605 grants Hawaii public employee access to private information of Hawaiians. As you can imagine, this provides an easily abused resource of information about your constituents and guests staying in the state.

Rather than advance HB 2605, which imposes all these burdens and unintended consequences, we instead encourage you to look to reasonable regulations that have proven beneficial in other jurisdictions.

¹ Gaby Del Valle, *Hotel CEO: New Airbnb Regulations Should Allow A 'Big Boost' In Hotel Room Rates*, Gothamist (Oct. 27, 2016) (Passage of a law limiting short-term rental services “should be a big boost in the arm for the business, certainly in terms of the pricing.”)

We've seen high compliance rates when localities create reasonable registration and regulation for STRs. A thoughtful approach to home-sharing by creating a registration process would benefit all Hawaiians. We welcome the opportunity to work with you on reasonable regulations that allow all to prosper.

Sincerely,

Carl Szabo

Vice President and General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org

HB-2605-HD-2

Submitted on: 3/20/2018 11:51:42 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cade Watanabe	Testifying for UNITE HERE Local 5	Oppose	No

Comments:

UNITE HERE Local stands in opposition to HB 2605 HD2. But we are submitting testimony supporting the intent of the proposed Senate Draft 1 with one minor technical amendment for your consideration.



OAHU ALTERNATIVE
LODGING ASSOCIATION
CITIZENS FOR A SHARED ECONOMY

**Senate
Economic Development, Tourism and Technology Committee
And
Public Safety, Intergovernmental, and Military Affairs Committee**

Wednesday, March 21, 2018, 1:45 p.m.
Room 414

**OPPOSE: HB2605, PROPOSED SD1, RELATING TO TRANSIENT
ACCOMMODATIONS**

Aloha Chairs Senator Waikai and Senator Nishihara:

My name is Brynn Rovito, testifying on behalf of the Oahu Alternative Lodging Association (OALA). We represent operators and owners of short-term rentals on the island as well as associated members in housekeeping, gardening and other services. We are an organization that supports the responsible advancement of our island's short-term rental industry.

We oppose HB2605, Proposed SD1. We are concerned that certain provisions in the measure create conditions so onerous that platforms would be discouraged from participating in a voluntary tax collection and remittance program set forth in the bill. Which in turn, would result in no tax revenue realized by the state.

Further, the measure creates penalties so severe that the industry will go further underground and individuals like our members will be severely harmed. For example, the measure makes violations of existing zoning regulations a Class C felony, the same as a rapist. Fines are incredibly severe, starting at \$25,000 and going all the way up to \$100,000. We believe that these heavy penalties will drive the industry further underground, which would result in a situation far worse than the one we are in now. The measure, therefore, would yield no fiscal benefit to the state or the counties. Most importantly, however, we believe that counties, rather than the state or internet platforms, should be responsible for enforcing land use regulations.

In closing, we hope the committee will recognize the substantial contributions our industry makes to the local economy and to the tax base of the state and the counties. According to the Hawaii Tourism Authority, the vacation rental industry generated \$5.1 billion in economic activity in 2016. Still another report by Kloninger and Sims found that the industry generated over \$120 million in TAT and GET revenue in 2016 from lodging and non-lodging activities. We recognize that balance is necessary to ensure impacts to neighborhoods and housing inventory are considered. This bill puts the entire industry at risk. We are confident, however, that counties can develop and establish reasonable regulations to achieve that balance while the state collects the tax revenue.

HB-2605-HD-2

Submitted on: 3/19/2018 12:36:43 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Klink	Individual	Oppose	No

Comments:

I OPPOSE HB2605 HD2 Proposed SD1 and I request that if it proceeds that the language in HB2605 be replaced with the language from [SB2963 SD1](#).

HB-2605-HD-2

Submitted on: 3/18/2018 7:28:46 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mark Gordon	Individual	Support	No

Comments:

As you are aware this Bill provide a mechanism for transient accommodations brokers such as Airbnb and VRBO to collect taxes on behalf of the state.

HB 2605 contains enforcement measures that require the Internet booking platforms to verify the legality of a vacation rental before doing business with it. This is needed to ensure the vacation rental meets all the State and County regulatory requirements.

By better tracking and registering vacation rentals, TAT and other required taxes could be collected from the owners. These additional taxes are much needed by the State and certainly the Counties.

HB 2605 would provide each County \$1 million to set up a registration, property taxation and tracking system for vacation rentals. This would provide much needed funds to Counties to help enforce this Regulation.

I also believe that there should be an anonymous hotline for residents who live near vacation rentals to report the residence to the County and State to ensure they meet the regulatory requirements.

Thanks for allowing me to share my comments.

HB-2605-HD-2

Submitted on: 3/19/2018 9:00:14 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Oppose	Yes

Comments:

Chair Waikai and members of the Senate Committee on ETT,

I sincerely appreciate the ability to testify on this important Bill. I am a residential homeowner who experienced the negative effects of illegal vacation rentals in my neighborhood. I stand in STRONG OPPOSITION to HB 2605 HD2 in its current form.

As home prices skyrocket, local residents are forced into rental situations, but the availability of reasonably priced rentals is almost non-existent. Where will Oahu residents live? They are the life-blood of the tourism industry yet pricing them out of the housing market by the literal flood of illegal vacation rentals will kill the allure of visiting the islands.

As noted by OHA in previous testimony, the unaddressed proliferation of illegal vacation rentals directly impacts the inflation of rental housing costs beyond that of most Oahu residents, and especially burdening the Native Hawaiian population. The Hawai'i Housing Planning Study released in 2016 estimates over 28,000 non-commercial vacation rentals are listed throughout Hawai'i, and permits constitute only a small fraction of this number. This proliferation of high-priced vacation rentals directly impacts housing availability, noting tremendous increases in monthly rents. This continued proliferation of illegal rentals is plagued by ineffective regulatory and enforcement mechanisms and will continue without legislative focus on better means of enforcement.

I am not opposed to tourists or tourism, but without a more robust focus on legislation to assist Departments and Enforcement Officers to curb the consumption of housing for residents more effectively and efficiently is critical. HB 2605 HD2 does not address this more pressing need. Based on this, I urge you to OPPOSE the bill in its current form.

Please focus on the NEEDS of residents. This bill will not help address the residential housing crisis.

Mahalo for allowing me to provide testimony in STRONG OPPOSITION to HB 2605 HD2.

Teresa Parsons

Kailua, Oahu resident and homeowner

HB-2605-HD-2

Submitted on: 3/19/2018 11:06:35 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip J Pearson	Individual	Oppose	No

Comments:

HB2605 HD2 proposed SD1

I request language in HB2605 be replaced with language from SB2963 SD1

HB-2605-HD-2

Submitted on: 3/19/2018 11:18:11 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Pyles	Individual	Oppose	No

Comments:

I OPPOSE HB2605 HD2 Proposed SD1 and request the language in HB2605 be replaced with the language from SB2963 SD1.

I am a 45 year residents of Kahala. I sit on the Waialae-Kahala Neighborhood board which has consistently passed resolutions opposing the expansion of TVU's in our residential neighborhoods many times over more than a decade. My family has been impacted directly by the increase in illegal vacation rental units and have been frustrated by the County and State's difficulty with enforcement and inability to detour the proliferation of illegal transient rental units. The majority of the owners we are aware of are not residents of Hawaii and most operate multiple units. We oppose HB2605 HD2 SD1 as it opens the door to more transient use of residential property in our already very limited affordable supply of residential properties available to residents who live and work in Hawaii. In addition, we can, from experience, speak to the incompatibly issues that vacationing occupants unleash on neighbors. **We urge you to adopt language that calls for effective enforcement against transient rentals in our residential neighborhoods returning our neighborhoods to local residents.** After all, the word residential has at its root "reside" which according to Webster's dictionary is defined as, "to dwell permanently or for a considerable time; to live, to be present habitually". Zoning was established to designate, protect and preserve areas for specific use, in this case we are asking you to protect and preserve the areas designated for us to reside in.

John Pyles

HB-2605-HD-2

Submitted on: 3/19/2018 12:10:58 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Young	Individual	Oppose	No

Comments:

OPPOSE HB2605 HD2 Proposed SD1 and request the language in HB2605 be replaced with the language from [SB2963 SD1](#)

HB-2605-HD-2

Submitted on: 3/19/2018 12:18:56 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan J. Wurtzburg	Individual	Oppose	No

Comments:

I strongly OPPOSE this bill. I rent in Kailua, and I am tired of dealing with entire houses in my street full of illegal BnBs. There is no long-term, residential rental inventory in Kailua, mainly because my neighbors are making \$\$\$\$. This is not a matter of owners renting out a room in their house to assist with the mortgage. These are short-term, illegal rentals of entire structures -- homes which could house Hawaii families, and are instead occupied by temporary visitors, who do not contribute long-term to the community, nor become good neighbors. Please regulate this illegal industry. I would like to see this bill replaced with the text from SB2963 SD1. That bill seemed like it was finally a step in the right direction.

Sincerely,

Susan J. Wurtzburg, PhD

HB-2605-HD-2

Submitted on: 3/19/2018 1:26:26 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lucinda Pyles	Individual	Oppose	No

Comments:

I oppose HB2605 HD2 SD1. Please replace the language in HB2605 with the language from SB2963 SD1.

My family has first hand experience with what transient vacation rentals do to a neighborhood. We have watched over the past couple of decades local residents replaced by illegal TVRs that either sit empty or have transients who are on vacation, i.e. in party mode, coming and going. Most of these properties are owned by out of state or out of country corporations, LLC's, LLP's, Trusts..... Many are operated by management companies so we never even meet, much less know a neighbor. They have proved to be very clever and deceitful when county inspectors attempt to curtail the illegal use. The state and county have been woefully ineffective in curtailing the proliferation of these units. ***We urge you to adopt measures that call for effective enforcement against transient rentals in our residential neighborhoods returning our neighborhoods to local residents. Please DO NOT adopt measures that support or encourage TVR's in residentially zoned areas!***

Lucinda Pyles

I write today to **strongly oppose** HB 2605

Under no circumstances do I support this bill. As a resident of Hawaii County, this is a ludicrous measure. If this is an attempt to try and help the housing shortage issue, it fails miserably. That is an issue that is entirely separate.

Until the landlord tenant laws are addressed, the housing issue will never be solved by limiting short term rentals. The legislature is unwilling to address the larger problem and is attempting to scapegoat the short-term vacation rental market. I currently have a rental that I will leave EMPTY before turning it into a long-term rental because of the landlord tenant laws. If I wanted to evict a deadbeat tenant, I would have to fly in a sheriff's deputy from Maui because the sheriff's department on Hawaii Island has not evicted anyone in over two years. I have a friend who has been trying to evict a non-paying tenant in Pahoehoe for three years. There is no resolution in sight. Fix this problem before trying to scapegoat short term rentals for political gain.

As for taxation, laws must be consistent with the ***Hawaii State Constitution*** and the ***Taxpayer's Bill of Rights***, which are guaranteed to all people. Transient accommodation operators should not be deprived of these fundamental rights.

Since the counties do not administer the tax collection function that the Department of Taxation does, it is not appropriate that they be deemed entitled to private information of taxpayers. This provision violates taxpayers' rights to confidentiality and privacy. It also creates an inconsistency in tax policy by divulging information on only one form of taxpayer; taxpayers collecting transient accommodation tax. This inconsistency makes it discriminatory in nature.

The Department of Taxation has established rules for tax compliance that ALL businesses, regardless of nature, abide by. By establishing a new method of tax payment that is unique to one type of business, HB2605 is depriving transient accommodation operators of rights provided to other taxpayers. The State of Hawaii, Department of Taxation Bill of Rights provides for the department's "pledge that the tax laws will be administered with fairness, uniformity, courtesy and common sense."

It is inappropriate to hold the operator liable for the actions or omissions of the agent who is registered or possessing an agreement with the DOT. An operator will not have knowledge of payments between the agent and DOT, leaving the operator responsible for something they have no knowledge or control over.

The DOT Bill of Rights provides: "Taxpayers have a right to be assured that their dealings with the Department of Taxation will be kept confidential. Taxpayers have a right to be assured that their tax returns and tax information will not be disclosed." The State of Hawaii Constitution provides "the legislature shall take affirmative steps to implement the right of the people to privacy" and "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated." Operators of TA should not be excluded and disenfranchised from these protections afforded all other taxpayers.

An agent should not be providing confidential tax information any county personnel as they are not designated tax personnel for state TAT or GET receipts. This would violate TA operators of the rights of privacy afforded to other taxpayers. This information should only be obtainable through proper subpoena power. This tax collection proposal has now failed to pass three times in the past two years. The faults in past versions of the proposal remain in this version. It is time to put this proposal to rest for good.

The counties of CC Honolulu, Kauai and Maui all have designated zones where it is legal to conduct transient accommodation rental. It is not practical for each legally zoned operator to obtain a written consent when it is easily identified as operating legally by its zoning category on the applicable zoning map for each county.

Phasing out conforming units and possibly, non-conforming units, would equate to a “government taking” and therefore property owners would be entitled to just compensation. It should also be pointed out that to adopt a law that eliminates the conforming use of single family homes in any zoning classification would be a breach of public trust in government who has made this activity legal since the 1960s.

Per Hawaii’s Home and Vacation Rental Market: Impact and Outlook Prepared for Hawaii Tourism Authority December 29, 2016:

- **Home and vacation rentals appear to be growing the pie rather than purely taking share from hotels.**
- **In major urban markets (non-resort markets) that JLL surveyed, this proportion was higher, suggesting that the business model of staying in home/vacation rentals in Hawaii is more established and mature, and as such not seeing as high of a growth rate as in New York, Austin, San Francisco, Nashville, etc.**
- **One-third of visitors surveyed indicated they chose to stay at home and vacation rentals because it enables them to stay outside of traditional hotel zones and because they enjoy the greater individuality.**
- **The two most common reasons for using home or vacation rentals are the relatively lower cost and more flexible/larger accommodations, which suggests those travelers would be less likely to travel to Hawaii if this option were not available**
- **15% of respondents indicated they would not have made the trip had it not been for the alternative accommodations option**
- **61% of visitors surveyed paid less per night for home and vacation rentals than the state’s hotel average daily rate.**
- **This proportion is deemed to represent induced demand resulting from the existence of the home/vacation rental market.**

Our elected officials are ignoring the fact that residents depend upon the income from vacation rentals to help pay their mortgages and living expenses. The guests who stay in those units follow the recommendations of the owners for local restaurants, shops, tours, scuba/snorkeling, grocery stores, farmer's markets, local massage therapists, and the like. Without TVR's the local economy suffers.

Mahalo,

Pamela Small

Big Island, Hawaii

HB-2605-HD-2

Submitted on: 3/19/2018 4:00:57 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Hagstrom	Individual	Oppose	No

Comments:

I oppose HB 2605 HD2 as written and support adding the wording in SB2963 SD1 to the bill.

HB-2605-HD-2

Submitted on: 3/19/2018 4:04:44 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Chin Lee	Individual	Oppose	No

Comments:

To Ways and Means Committee,

I strongly oppose HB2605 HD2. There was a similar bill prior to this (SB2999 & SB2693), and these bills received over 110 oppositions. Why does the committee propose a new bill with similar language and trying to insert itself into this issue when counties are trying to develop and implement local regulations on this issue. The legislature should allow the counties to develop their own zoning and regulatory solutions before considering any additional action.

Currently, Oahu and Big Island are working toward creating a regulatory framework regarding vacation rentals. Honolulu City Council passed 4 Resolutions on the issue and the Mayor has set-up a task force to address concerns. Last November, Hawaii County Councils discussed the possibility of regulating vacation rentals. Furthermore, Governor Ige vetoed a measure passed through the state legislature that would have allowed transient accommodations brokers to register as tax collection agents with the state.

This is why it is important to allow the counties to explore regulatory framework before moving forward with another state tax plan that may be squashed by the current administration. Vacation rentals fall under the city's/county's jurisdiction. In order for any bill to work as intended, counties should enforce their own laws on vacation rentals.

I hope you will consider my testimony when you consider this bill. Thanks

HB-2605-HD-2

Submitted on: 3/19/2018 4:21:14 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Colin Lau	Individual	Oppose	No

Comments:

Aloha Chairpersons Senators Clarence Nishihara and Glenn Wakai.

I respectfully oppose the bill that your two committees are planning on hearing this Wednesday. your committees should wait for the counties to develop their own zoning and regulations before your committees consider taking any action. Recently the house leadership held SB2963,SD1 due to flaws and issues in that bill and we notice your committees have reintroduced that same bill in the house measure.

Please hold this bill and not pass it.

thank you

HB-2605-HD-2

Submitted on: 3/19/2018 4:24:37 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
mei xue	Individual	Oppose	No

Comments:

Dear ETT/PSM Committee Chairs,

I would like to express my Oppose position to this bill.

Why is the Hawaii State Senate trying to insert itself into this issue when several Counties are in the midst of trying to figure out local regulations on the industry? The Senate should wait for the counties to develop their own zoning and regulatory solutions before considering any additional action. own and operate a vacation rental and I'm worried about the impact SB2905, HD2 will have on my business, my family and those who work for me. SB2905, HD2 would restrict the use of properties as vacation rentals, require brokers to share personal owner information with State and County agencies and increase penalties on owners and brokers of unpermitted vacation rentals. I also question whether or not it is in violation of several Federal Statutes. I'm all for reasonable regulation and appropriate penalties, and for everyone to pay their taxes, but both Hawaii County and the City and County of Honolulu should be allowed to first update their regulations in an effort to deal with some of the key issues highlighted in SB2905, HD2. Why not wait to see what kind the come up with before trying to wade in. It seems that this bill is trying to put the cart before the horse. I ask you to please defer SB2905, HD2. Aloha,

HB-2605-HD-2

Submitted on: 3/19/2018 4:39:58 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rob Guzman	Individual	Oppose	No

Comments:

I strongly oppose HB2605. This is an Oahu-specific issue and should only pertain to Oahu. In East Hawaii we have 6000 daily visitors and 1000 hotel rooms. Perhaps we should cancel Merrie Monarch every year, because they will have nowhere to stay once vacation rentals outside of the limited, white, wealthy, resort zones are banned.

HB-2605-HD-2

Submitted on: 3/19/2018 5:34:59 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lucretia Worster	Individual	Oppose	No

Comments:

I strongly oppose HB2605. This bill is clearly written with the goal of eliminating transient vacation rentals which are vital to our communities. It will crush the tourism industry in more remote areas of the islands, take away valuable jobs, and reduce the amount of tax revenue generated for the state and counties.

TVRs are essential to our communities: I live in Volcano, a small town which has only a few "hotel-style" accommodations, all easily over \$200 a night. Volcano National Park has over 2 million visitors a year. Without transient vacation rentals, these visitors would stay for a few hours, then leave. The next closest hotels are over 40 minutes away in Hilo. Restaurants would close. Stores would close. Cleaners and maintenance people would have to commute long distances, and still make less per hour.

Volcano is a vibrant community. There are vacation rentals, but also families, retirees, and artists. Many of our residents are able to live here BECAUSE of vacation rentals. A 2015 study showed that 66% of Hawaii-based TVR owners require that income to pay their monthly bills. Jobs associated with vacation rentals pay far more than minimum wage. Would Target pay \$20 an hour to have their toilets washed? Probably not.

This will not fix housing: If you are attempting to address the long term housing market, this is not the way. Do something about landlord tenant laws and make it more economically attractive for owners to rent their homes long-term.

Many short term accommodations, especially those that cater to young and budget-conscious travelers, are not meant for long term living. If I could not run my vacation rentals, they would sit empty or possibly be sold — most likely to someone off-island who would only visit a few weeks a year. These off-island empty-house owners would NOT pay state taxes and would not contribute significantly to our economy. Like the

former short term rentals on Kauai, our neighborhoods would become empty shells and businesses would close.

This law is overreaching: I run my own business, but if I did hire a company to help me, it should not be their responsibility to make sure I pay my taxes. I am the business owner and tax payer. The state and county should come to me if there is a question. There are already rules regarding privacy and information sharing that apply to ALL businesses, regardless of the type of business. By singling out TVRs, HB2605 is depriving transient accommodation operators of rights provided to other taxpayers and establishing a frightening new precedent.

Hawaii Island brings in a considerable amount of money via TAT and GET, and would bring in even more if current laws were enforced. Receiving our fair share of that tax revenue should not be contingent on taking away livelihoods. This is a ridiculous law that would only hurt our community and benefit big businesses and those with a vendetta against their neighbors.

Again, I am adamantly opposed to HB2605. Please do the right thing and oppose this job killing law.

HB-2605-HD-2

Submitted on: 3/19/2018 7:13:16 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Individual	Oppose	No

Comments:

Too important an issue for our economy. Let the counties do their work first.

HB-2605-HD-2

Submitted on: 3/19/2018 7:38:51 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Alexander Ress	Individual	Oppose	No

Comments:

I am writing to oppose HB 2605 HD2. We have a housing problem that this will make worse. Pass something that will give us some enforcement of the laws that protect our residential housing for people who live here. Use the language of SB 2963 SD1.

HB-2605-HD-2

Submitted on: 3/19/2018 7:46:51 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Marten	Individual	Oppose	No

Comments:

Aloha Chairs and Members. One requirement of this Bill in order for the counties to receive funds from the State is to create a process to issue permits for "qualifying" properties to be used as TVUs or B&Bs. In my county, Honolulu, we have a housing crisis and do not need newly issued permits for vacation rentals in residential areas. We need enforcement of existing zoning law to preserve residential housing stock for actual residences.

Please instead use language to beef up enforcement, such as that found in the excellent SB2963 that showed an intent to help the people of our State instead of outside investors.

Mahalo, Lisa Marten

HB-2605-HD-2

Submitted on: 3/19/2018 8:16:23 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
anne towey joyer	Individual	Oppose	No

Comments:

Aloha,

I request the language in HB2605 be replaced with the language from [SB2963 SD1](#).

Mahalo,

Anne Towey-Joyer

HB-2605-HD-2

Submitted on: 3/19/2018 9:36:59 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Moore	Individual	Oppose	No

Comments:

Dear Legislators, Please do not be overwhelmed by the greed of our fellow politicians, bankers, realtors and contractors. Please stop the spread of illegal short-term vacation rentals before our communities are destroyed. AirBNB must be defeated at every turn. The attempt to bribe your county should be rejected. All legislators that are related to the banks that provide financing for illegal vacation rentals should not be allowed to vote on this issue. All legislators that receive benefits from the realtors that make commissions on these illegal rentals should not be allowed to vote on this issue. Please stop the spread of this greedy destruction of our communities. This greed is driving the price of housing out of reach of local people. The speculators are often coming from California and other out of state sources. Mahalo.

HB-2605-HD-2

Submitted on: 3/19/2018 9:37:37 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
ronald steiner	Individual	Oppose	No

Comments:

Home accommodations for short term rental are now world wide and not going away, in spite of what our Hotel Industry would like to see. We now have upwards of 9 Million tourists a year coming to these Islands; without the short term rentals, this as the numbers will show, would be hard if not impossible for the Hotels to handle. They are close to capacity, charge excessively and do not fill the needs of many local families and tourists who prefer to stay with or close to families and friends. The 2 bills SB and HB are confusing and not done in coordination with the counties...Many of us who rent rooms short term, live on our properties should be able to register and be in compliance! We pay our excise and TAT as we are law abiding citizens, please resolve this issue once and for all...for the benefit of all.

I only have a separate room, I would never rent this out long term as it does not have a kitchen or the space for long term and does not take anything away from a whole house rental...I wish you all resolve and determination to see thru this issue and make fair and equitable decisions.

Please defer this Bill and work with the counties; stay away from draconian measures as this Bill proposes.

HB-2605-HD-2

Submitted on: 3/19/2018 11:03:52 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
steven	Individual	Oppose	No

Comments:

Please change the language of the HB2605 HD2 to the language of [SB2963 SD1](#).

We do not need to allow the remote possibility of legitimizing ILLEGAL Short term rentals in residential neighborhoods. Enforcement should first be enacted. These ILLEGAL Short Term rentals are competing with residential long term rentals. For every long term rental converted to as short term rental you a contributing to the housing crisis, same with allowing these ILLEGAL short term rentals to increase you are reducing the number of homes that are used for single families who wish to live as a single family.

Please do the right thing!

HB-2605-HD-2

Submitted on: 3/20/2018 3:00:23 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Katie Crump	Individual	Oppose	No

Comments:

HB-2605-HD-2

Submitted on: 3/20/2018 3:36:54 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Paula Ress	Individual	Oppose	No

Comments:

This bill is a clear passageway to turn residential areas into resorts. Where is enforcement language?

HB-2605-HD-2

Submitted on: 3/20/2018 8:42:03 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mark Lloyd	Individual	Oppose	No

Comments:

When my studio in Makiki (I lived in for 9 years, now is a longterm rental) became vacant from a 4 year tenant, I could not find a suitable renter over the course of a month. That mortgage of \$1,200 caused me to downsize my food portions and barely get buy on all the other bills the following month. Airbnb brought me a 22 day renter, then an 11 day mom and dad who wanted to live near their University of Hawaii grad daughter and their new grand daughter. It was such a lovely situation to be a part of.

After that I found a good longterm couple and all is back to normal.

Dear ETT/PSM Committee Chairs, the City council has heard my story, and they are working to find the right decision.

Why is the Hawaii State Senate trying to insert itself into this issue while the city has been learning the whole picture?

The short time I had a 'short term rental' would not be able to happen should SB2905, HD2 go into effect. The restriction of use of properties as vacation rentals, sounds like it is in violation of several Federal Statutes with its sweeping language.

The trend to increase penalties on owners and brokers of unpermitted vacation rentals is looking too Orwellian for my liking. Two friends of mine, with their wives, have moved from Hawaii this last year; they were both here for over 15 years, one was born and raised. They are frustrated with the constant over reach of the Govt., constant increase in taxes, and fees, and overall high price of living.

I'm all for reasonable taxation, but both Hawaii County and the City and County of Honolulu should be allowed to first settle a solution with the public, as the hearings have been going. Apparently some of the issues highlighted in SB2905, HD2 need clarity and foresight.

Please wait to see how the city and county finds a solution, before inserting yourselves into a matter that is in the process of being settled.

I ask you to please defer SB2905, HD2.

Aloha,

Mark Lloyd, Makiki

HB-2605-HD-2

Submitted on: 3/20/2018 9:09:27 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rebecca Atkinson	Individual	Oppose	No

Comments:

Dear ETT/PSM Committee Chairs,

Please don't let this bill hurt our economy. We need the tax dollars. The hotels are already overbooked. Where will all the tourists stay? More and more people want alternative stays for vacation for a different family experience. **When you go on vacation somewhere else can you honestly say that you have never stayed at, looked at or considered staying in a vacation rental place?**

>> Alternative accommodations generated over \$120 million in general excise and transient accommodations taxes statewide in 2016 (lodging and non-lodging spending). If the state had a system in place to allow platforms such as Airbnb to collect and remit these taxes from operators, this tax revenue would be more fully and effectively captured.

The Senate should wait for the counties to develop their own zoning and regulatory solutions before considering any additional action. SB2905, HD2 would restrict the use of properties as vacation rentals, require brokers to share personal owner information with State and County agencies and increase penalties on owners and brokers of unpermitted vacation rentals.

There is no permitting process so how can you even make a bill that hurts something you haven't been able to establish. **Why is it so much easier in the other counties?**

I'm all for reasonable regulation and appropriate penalties, and for everyone to pay their taxes, but both Hawaii County and the City and County of Honolulu should be allowed to first update their regulations in an effort to deal with some of the key issues highlighted in SB2905, HD2. **I ask you to please defer SB2905, HD2.**

Aloha,
Rebecca Atkinson

HB-2605-HD-2

Submitted on: 3/20/2018 9:13:57 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christine Otto Zaa	Individual	Oppose	No

Comments:

Aloha ETT/PSM Committee members,

I OPPOSE HB2605 HD2 in its present form. The enforcement language and intent of SB2963 SD1 should replace the contents of HB2605 HD2. This bill legitimizes the illegal vacation rentals proliferating in our residential neighborhoods. We are in the midst of a housing crisis, please do not take away needed housing inventory that our local residents desperately need. Please stop the commercialization of our residential neighborhoods. Thank you for your consideration.

Christine Otto Zaa, HI Good Neighbor

HB-2605-HD-2

Submitted on: 3/20/2018 10:21:20 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael L Quisenberry	Individual	Oppose	No

Comments:

Big hotels in the state need not controll the rest of the state. Allowing turists to vacation outside of waikiki and resort areas is part of supplying a range of vaction options. Vactions rentals HELP local families to pay their bills and stay in hawaii rather than moving to places with a lower cost of living. Vaction rental operators should be promoted rather than highly fined and regulated since turisim is hawaii's NO 1 industry. Its simliar to somone getting a degree from college and then local regulations decide how and when that person can use that degree and what employment they can apply for. This isn't right and vacation rentals should be promoted, with an individual focus in on the problems that may arise, rather than regualtion and fines for operators.

HB-2605-HD-2

Submitted on: 3/20/2018 11:03:43 AM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jordan Moniuszko	Individual	Oppose	No

Comments:

I oppose this bill. Hawaii needs more rentals for workers rather than vacation rental units.

HB-2605-HD-2

Submitted on: 3/20/2018 1:20:11 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Simpson	Individual	Support	No

Comments:

I support this bill, based on the facts.

There isn't enough affordable housing in Hawaii.

More than 75% of the vacation rentals available are for whole houses or apartments.

The effect on the real estate market to losing these homes and apartments is to RAISE house prices and RAISE the cost of living. Simple supply and demand.

Randy Simpson

HB-2605-HD-2

Submitted on: 3/20/2018 1:40:10 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Elen Stoops	Individual	Oppose	No

Comments:

HB-2605-HD-2

Submitted on: 3/20/2018 1:42:23 PM

Testimony for ETT on 3/21/2018 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew Hubner	Individual	Oppose	No

Comments:

Dear Honorable Members of the Committee, I am writing to provide testimony in **opposition** of the majority of revisions proposed in HB2605 HD2 SD1 and its companion SB2963. As the owner of a transient vacation rental (TVR) on the island of Hawai'i, I fully support efforts by the State to collect taxes, and I support justifiable regulation where it will best serve my guests, neighbors and the community. While this bill provides a mechanism for the state to collect taxes and attempt to regulate TVRs, it does so with an overly-heavy hand.

First, I do not have strict opposition to having the online platforms collect and remit taxes to the State, but my preference would be to maintain the current process of having owners remit their own taxes and increase the ability of the Department of Taxation to enforce current laws.

Second, I have issue with the addition of language requiring that transient accommodations broker(s) enforce compliance with County ordinance. Our rental is located in Volcano, Hawai'i County where the land use zoning definitions relating to TVRs are not currently established. I understand that Hawai'i County is currently drafting such zoning measures, but the public is currently unaware of what those provisions entail. Volcano is an ecologically sensitive area, and the TVR and B&B community in the area serve visiting tourists in an area without substantial hotel lodging. This area would likely be greatly impacted if such lodging were established to support the rooms necessary for the current visitor loads. I worry about the effect of this requirement for rentals in Counties where TVRs are well-established and land use zoning does not currently address the validity of TVRs in residential areas. I believe this provision and the others similar to it in this bill will spur Hawai'i County to develop land use restrictions without adequately evaluating the economic and environmental impacts nor seeking the necessary public input to develop appropriate measures.

Third, I have issue with the following addition: "Where a county seeks injunctive relief for violations related to single-family transient vacation rental units as provided by ordinance, the county need not show irreparable injury;" This addition singles out TVRs and implies that they are an imminent substantive threat that do not require the County to overcome the burden of proof before the courts to seek injunctive relief. Such burdens are in place to prevent government take of an individual's property by nullifying their due process. If the State can eliminate this process for TVRs, one can ask what

protections will be eliminated next. Additional provisions in this bill appear to require judicial review of zoning ordinance violations for TVRs by the Circuit Court and may not be stayed. Further, this bill includes language that would make a zoning ordinance violation by a TVR a Class C felony. Class C felonies in Hawaii comprise actions such as drug dealing. I support actions to enforce laws, but making a zoning ordinance violation for one specific group would likely be found to be arbitrary and capricious.

Finally, I have great concern regarding the following additions: "A zoning ordinance may provide for the amortization or phasing out of conforming or nonconforming single-family transient vacation rental units over a reasonable period of time in an area of any zoning classification." and the addition of "other than transient vacation rental units, as provided in this section." to the end of the current language in law: "In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses." These revisions provided alter the existing law to allow amortizations of a specific nonconforming (Single-Family Transient Accommodations) use in all zones, including Residential. The existing Hawaii law currently permits amortization of nonconforming uses in Commercial, Industrial, Resort, and Apartment zoned areas only. The proposed language in this Bill would authorize amortizations in Residential-zoned areas; something that the law up until now has expressly prohibited. Further, the new language targets one specific use (Single Family Transient Accommodations), setting a new precedent in this provision. The case notes at the end of §46-4 County zoning state: "Grandfather protections afforded a property owner under this section and land use ordinance intended to prohibit new zoning ordinances from interfering with an owner's lawful uses of a building or premises under an existing zoning ordinance. 86 H. 343 (App.), 949 P.2d 183." Based on the notes above, the revised language in this Bill imply (without merit) that the use of a single-family residential property as a transient vacation rental is unlawful. As such, grandfather protections would not apply. I believe such action would be grounds for consideration as a constitutional taking. Amortizations are generally considered useful when there is an extreme nuisance or imminent threat to the community (e.g. removing billboards or phasing out of junkyards). The new language does not support that such a threat is presented by the Single Family Transient Accommodations use nor does it weigh the benefit to the communities to the loss of the property owners. There is no adequate justification included with these revisions to validate the extreme necessity of voiding Hawaii property owners' rights of use.

I offer these points for your consideration. Thank you for the opportunity to provide comment.

Matt Hubner