



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

Testimony of **Ford Fuchigami**  
Administrative Director, Office of the Governor

Before the  
**Senate Committee on Ways and Means**  
and the  
**Senate Committee on Economic Development, Tourism, and Technology**  
February 5, 2018  
9:55 a.m., Conference Room 211

In consideration of  
**Senate Bill No. 2963, Proposed SD 1**  
**RELATING TO TRANSIENT ACCOMMODATIONS**

Thank you for the opportunity to provide **comments in support of Senate Bill 2963, Proposed Senate Draft 1.**

Currently, many property owners in this State are renting their places to tourists and transients. This bill provides taxpayers the opportunity to pay delinquent taxes through an amnesty program, discourages unlawful transient vacation rentals, enhances the department of taxation's ability to collect taxes due through a tax collection agent, and protects property owners from unlicensed property managers.

We appreciate your attention and will be available to answer your questions, should you have any at this time.

DAVID Y. IGE  
GOVERNOR

DOUGLAS S. CHIN  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

DAMIEN A. ELEFANTE  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF TAXATION**  
830 PUNCHBOWL STREET, ROOM 221  
HONOLULU, HAWAII 96813  
<http://tax.hawaii.gov/>  
Phone: (808) 587-1540 / Fax: (808) 587-1560  
Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Senate Committee on Ways and Means

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

Date: Monday, February 5, 2018  
Time: 9:55 A.M.  
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: S.B. 2963, Proposed S.D. 1, Relating to Transient Accommodations

The Department of Taxation supports the intent of S.B. 2963, Proposed S.D. 1, and defers to the Department of the Attorney General on this measure.



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

**DAVID Y. IGE**  
GOVERNOR

**LUIS P. SALAVERIA**  
DIRECTOR

**MARY ALICE EVANS**  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
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Statement of  
**LUIS P. SALAVERIA**  
**Director**  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON WAYS AND MEANS**  
**AND**  
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND**  
**TECHNOLOGY**

Monday, February 5, 2018  
9:55 AM  
State Capitol, Conference Room 211

in consideration of

**SB2963, PROPOSED SD1**  
**RELATING TO TRANSIENT ACCOMMODATIONS.**

Chairs Dela Cruz and Wakai, Vice Chairs Keith-Agaran and Taniguchi, and Members of the Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of SB2963, Proposed SD1.

We defer to the Attorney General's Office regarding any legal concerns about this bill and to the Department of Taxation.

Thank you for the opportunity to provide comments on this measure.



DAVID Y. IGE  
GOVERNOR

DOUGLAS S. CHIN  
LIEUTENANT GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEES ON  
WAYS AND MEANS  
AND  
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

TWENTY-NINTH LEGISLATURE  
Regular Session of 2018

Monday, February 5, 2018  
9:55 a.m.

**REVISED TESTIMONY ON SENATE BILL NO. 2963, PROPOSED SENATE DRAFT  
1, RELATING TO TRANSIENT ACCOMMODATIONS.**

TO THE HONORABLE DONOVAN M. DELA CRUZ, CHAIR, THE HONORABLE  
GLENN WAKAI, CHAIR, AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on S.B. 2963, Relating to Transient Accommodations. My name is Stephen Levins, and I am the Executive Director of the Department’s Office of Consumer Protection. The Department supports the intent of this bill and defers to the Office of the Governor regarding the administration’s position on this measure.

Thank you for the opportunity to testify on S.B. 2963. I would be happy to answer any questions the Committees may have.



**SB2963 Proposed SD1**  
**RELATING TO TRANSIENT ACCOMMODATIONS**  
Senate Committee on Ways and Means  
Senate Committee on Economic Development, Tourism, and Technology

February 5, 2018

9:55 a.m.

Room 211

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees **SUPPORT** the Proposed SD1 of SB2963, which seeks to improve enforcement of land use regulations relating to transient vacation rentals, while facilitating the collection of tax revenue from transient vacation rentals that comply with the law. Given the impact of unlawful transient vacation rentals on housing opportunities for Native Hawaiians and other Hawai'i residents, OHA appreciates and supports the strong and much-needed enforcement mechanisms that would be provided by this measure.

**As home prices, rental prices, and homelessness continue to increase, and as O'ahu anticipates additional population growth and an associated demand for more housing over the next decade,<sup>1</sup> land-use planning that ensures housing affordability and availability is more critical now than ever before.** As the legislature recognizes, Hawai'i is in the midst of an affordable housing crisis: recent research indicates a need for 65,000 more housing units by 2025, with half of this demand for units at or below 60% of the Area Median Income (AMI);<sup>2</sup> only 11 percent of State's housing demand is for housing units at or above 140% AMI, or for units that do not meet the State's current definition of "affordable housing."<sup>3</sup> **With 48% of households in the State already unable to afford basic household necessities including housing, food, transportation, health care and child care,<sup>4</sup> the lack of affordable housing and rising housing costs require bold and aggressive policies that meaningfully prioritize the housing needs of local residents.**

**Native Hawaiians are particularly disadvantaged by land uses that contribute to our local residential housing challenges, including increased rental housing costs and rental housing shortages in particular.** Notably, Native Hawaiians are less likely to own a home and, therefore, disproportionately rely on the rental housing market.<sup>5</sup> Native

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<sup>1</sup> See SMS, HAWAI'I HOUSING PLANNING STUDY, at 34 (2016), available at [https://dbedt.hawaii.gov/hhfdc/files/2017/03/State\\_HHPS2016\\_Report\\_031317\\_final.pdf](https://dbedt.hawaii.gov/hhfdc/files/2017/03/State_HHPS2016_Report_031317_final.pdf)

<sup>2</sup> See *id.*

<sup>3</sup> See *id.* at 34.

<sup>4</sup> ALOHA UNITED WAY, ALICE: A STUDY OF FINANCIAL HARDSHIP IN HAWAI'I (2017)

<sup>5</sup> See OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN HOMEOWNERSHIP HO'OKAHUA WAIWAI FACT SHEET

Hawaiian households are also much more likely to be “doubled up,” with multi-generational or unrelated individuals living together in single households,<sup>6</sup> and Native Hawaiian households are more than three times more likely have a ‘hidden homeless’ family member than all state households.<sup>7</sup>

**Unfortunately, the unaddressed proliferation of illegal vacation rentals may exacerbate the rise in rental housing costs beyond what Honolulu residents and Native Hawaiians are able to afford, and has directly removed much-needed housing units from the residential rental market.** The 2016 Hawai‘i Housing Planning Study estimates that there are 28,397 non-commercial vacation rentals, located in nearly all communities in Hawai‘i.<sup>8</sup> Not surprisingly, the proliferation of such units, which generate nearly 3.5 times more income than the average long term residential rental,<sup>9</sup> has correlated with substantially increased housing costs throughout the islands; Honolulu in particular had the highest rates of increase in average monthly rent and average daily rent over the past several years.<sup>10</sup> In addition to raising the costs of available long term rental units, the proliferation of illegal vacation rentals also represents a direct loss of housing units from the long term rental market.<sup>11</sup>

Clearly, allowing the continued illegal use of housing units for vacation rentals will only exacerbate our housing crisis. Without more meaningful regulatory and enforcement mechanisms, there is nothing to stop the negative impacts of illegal vacation rentals on housing opportunities for Native Hawaiians and other local residents. In contrast, each and every illegal vacation rental unit that is returned to long-term residential use is one more unit that can help meet our existing housing demand.<sup>12</sup> **Accordingly, OHA has**

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VOL.2016, NO. 1, page 3, available at

<https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/NH-Homeownership-Fact-Sheet-2016.pdf>. This figure includes 8,329 DHHL residential lease “owner-occupied” property units. DHHL ANNUAL REPORT 2014, at 47, available at <http://dhhl.hawaii.gov/wpcontent/uploads/2011/11/DHHL-Annual-Report-2014-Web.pdf>. For non-DHHL properties, the NativeHawaiian homeownership rate is therefore 41.2%, 15.5 percentage points below the statewide rate.

<sup>6</sup> 24.8% of Native Hawaiian households, compared to 9.6% of state households include more than two generations or unrelated individuals. SMS, *supra* note 1, at 70.

<sup>7</sup> 14.1% of Native Hawaiian households, compared to 4.2% of state households have a hidden homeless family member. *Id.*

<sup>8</sup> There are an estimated 45,075 total vacation rental units measured by the study. The study estimates that at least 37% of these rentals are ‘commercial’ rentals, or resort condominium and condominium hotel properties which are legally permitted commercial operations. As such, the study estimates that 28,397 units are non-commercial, i.e. unlawful, transient vacation rentals. SMS, *supra* note 1, at 58.

<sup>9</sup> SMS, *supra* note 1, at 55.

<sup>10</sup> Honolulu’s average monthly rent growth rate was 26.1%, and the six-year growth rate of average daily rental rate was 47%. SMS, THE IMPACT OF VACATION RENTAL UNITS IN HAWAI‘I, 2016, at 8, available at <http://www.hawaiiourismauthority.org/default/assets/File/Housing%20and%20Tourism%20113016.pdf>

<sup>11</sup> The Hawai‘i Tourism Authority’s 2016 study found that vacation rentals increased by 34% per year between 2005 and 2015. Further investigation found that between 2011 and 2014, units held for seasonal use and not available for long term rent increased by 12%. *See id.* at 3.

<sup>12</sup> *See generally* SMS, *supra* note 1.

**advocated for regulatory and enforcement approaches that may systemically curb and reverse the impact that illegal vacation rentals continue to have on residential housing opportunities in Hawai‘i.**

Accordingly, OHA appreciates and strongly supports the robust enforcement framework provided for under this measure. This includes the mandatory compliance monitoring and reporting requirements imposed on transient vacation rental brokers who wish to act as tax collection agents on behalf of rental operators; the requirement that brokers remove listings for illegal vacation rentals; and the strict penalties for noncompliance on both brokers and operators that will deter further unlawful land uses. **Such provisions will appropriately hold those most responsible for our transient vacation rental problem directly accountable for their actions, and subject them to the strict penalties that reflect the magnitude of our growing housing crisis.**

As a final note, research shows that vacation rental activity in the State generally is not likely to provide meaningful and long-term economic benefits to Hawai‘i or its residents, including Native Hawaiians. Data has shown that **70% of properties listed as vacation rentals in Hawai‘i are owned by out-of-state property owners** who do **not** reside in the islands.<sup>13</sup> Native Hawaiians in particular are less likely to benefit directly from a transient vacation rental operation; with Native Hawaiian homeownership rates significantly lower than the state average, they are less likely to own second or additional homes that could be rented as vacation units.<sup>14</sup> As previously mentioned, Native Hawaiians also often live in overcrowded households, without the extra rooms needed to operate an owner-occupied vacation rental. As such, while some Hawai‘i residents may be able to earn extra income from the use of a property as a vacation rental, vacation rental operations primarily benefit nonresident property owners and real estate speculators – who may also seek to buy out any vacation rentals that owned by local residents now and in the future.

In addition, other jurisdictions have found that any economic benefits gained from permitted short-term vacation rental operations are far outweighed by the larger social and economic costs of removing long term rentals from the housing market. **For example, an economic analysis by the City of San Francisco found a negative economic impact of \$300,000 for each housing unit used as a vacation rental, exceeding any economic benefits from visitor spending, hotel tax, and associated revenues.**<sup>15</sup> Again, the short-term benefits of vacation rental units to some property owners, including non-resident property

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<sup>13</sup> Notably, the Hawai‘i Tourism Authority report found that 45,075 total properties are available for short term vacation rentals, with between 21,295 and 23,002 as non-commercial vacation rental units advertised in 2016. 70% of these properties are offered by out-of-state property owners. SMS, *supra* note 10, at 5-6.

<sup>14</sup> For non-DHHL properties, the Native Hawaiian homeownership rate is 41.2%, 15.5 percentage points below the statewide rate. See *supra* note 5.

<sup>15</sup> See CITY OF SAN FRANCISCO, OFFICE OF THE CONTROLLER, AMENDING THE REGULATION OF SHORT-TERM RESIDENTIAL RENTALS: ECONOMIC IMPACT REPORT, May 2015, available at [http://sfcontroller.org/sites/default/files/FileCenter/Documents/6458150295\\_economic\\_impact\\_final.pdf?documentid=6457](http://sfcontroller.org/sites/default/files/FileCenter/Documents/6458150295_economic_impact_final.pdf?documentid=6457).

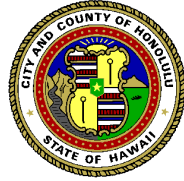
owners and corporate vacation rental operators, are likely to be substantially outweighed by the fiscal impacts on Honolulu and its residents from increased housing costs, increased real estate speculation, and the need for more social services and housing subsidies. **Accordingly, OHA strongly believes that regulatory and enforcement mechanisms that decrease the number of illegal vacation rental units operating in Hawai'i will best benefit Native Hawaiians and all Hawai'i residents.**

Therefore, OHA urges the Committees to **PASS** SB2963 Proposed SD1. Mahalo nui for the opportunity to testify on this measure.



**OFFICE OF THE MAYOR  
CITY AND COUNTY OF HONOLULU**

530 SOUTH KING STREET, ROOM 300 • HONOLULU, HAWAII 96813  
PHONE: (808) 768-4141 • FAX: (808) 768-4242 • INTERNET: [www.honolulu.gov](http://www.honolulu.gov)



KIRK CALDWELL  
MAYOR

ROY K. AMEMIYA, JR.  
MANAGING DIRECTOR

GEORGETTE T. DEEMER  
DEPUTY MANAGING DIRECTOR

CITY AND COUNTY OF HONOLULU  
MONDAY, FEBRUARY 5, 2018, 9:55 AM

TO: THE HONORABLE DONOVAN M. DELA CRUZ  
THE HONORABLE GILBERT S.C. KEITH-AGARAN  
AND MEMBERS OF THE COMMITTEE ON WAYS AND MEANS

THE HONORABLE GLENN WAKAI  
THE HONORABLE BRIAN T. TANIGUCHI  
AND MEMBERS OF THE COMMITTEE ON ECONOMIC  
DEVELOPMENT, TOURISM, AND TECHNOLOGY

FROM: KIRK CALDWELL, MAYOR  
CITY AND COUNTY OF HONOLULU

SUBJECT: SUPPORT FOR SB2963 PROPOSED SD1

The City and County of Honolulu (City) supports the provisions of SB2963 Proposed SD1 that allow the Director of Taxation to permit a transient accommodations broker to register as a tax collection agent on behalf of its operators and plan managers; provided that the tax collection agent verifies that the subject operators and plan managers comply with all state laws and county ordinances.

Many operators of non-compliant short term rentals mistakenly believe that they comply with all laws because they pay general excise taxes and transient accommodations taxes on their short term rentals. We believe the requirement that tax collection agents verify compliance with all state laws and county ordinances will address this issue.

The City does not take a position on the creation of a tax amnesty program for state taxes and defers to the Department of Planning and Permitting on the enforcement tools that this measure provides.

Thank you for your consideration of our testimony in support.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
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DEPT. WEB SITE: [www.honolulu.dpp.org](http://www.honolulu.dpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR



KATHY K. SOKUGAWA  
ACTING DIRECTOR

TIMOTHY F. T. HIU  
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI  
DEPUTY DIRECTOR

February 5, 2018

The Honorable Donovan Dela Cruz, Chair  
and Members of the Committee on Ways  
and Means

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

Hawaii State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Dela Cruz and Wakai, and Committee Members:

Subject: Senate Bill No. 2963, Proposed SD 1  
Relating to Transient Accommodations

The Department of Planning and Permitting (DPP) is pleased to **strongly support** Senate Bill No. 2963, 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.

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;

The Honorable Donovan Dela Cruz, Chair  
and Members of the Committee on Ways  
and Means

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

Hawaii State Senate

Senate Bill No. 2963, Proposed SD 1

February 5, 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.

Finally, 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.

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.

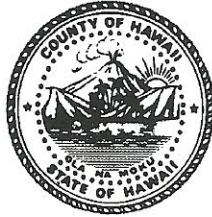
Thank you for the opportunity to testify.

Very truly yours,



Kathy Sokugawa  
Acting Director

**VALERIE T. POINDEXTER**  
*Council Chairwoman & Presiding Officer*  
*Council District 1*



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## HAWAI'I COUNTY COUNCIL

*County of Hawai'i*  
*Hawai'i County Building*  
*25 Aupuni Street, Suite 1402*  
*Hilo, Hawai'i 96720*

February 2, 2018

Senate Committee on Ways and Means  
Donovan M. Dela Cruz, Chair  
Gilbert S.C. Keith-Agaran, Vice Chair

Email: [sendelacruz@Capitol.hawaii.gov](mailto:sendelacruz@Capitol.hawaii.gov)  
Email: [senkeithagaran@Capitol.hawaii.gov](mailto:senkeithagaran@Capitol.hawaii.gov)

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

Email: [senwakai@Capitol.hawaii.gov](mailto:senwakai@Capitol.hawaii.gov)  
Email: [sentaniguchi@Capitol.hawaii.gov](mailto:sentaniguchi@Capitol.hawaii.gov)

Subject: Testimony Supporting SB2963, Proposed SD 1 Relating to Transient Accommodations  
Hearing: February 5, 2018, 9:55 a.m., Room 211

Dear Senators:

On behalf of myself and the constituents of Council District 1 in Hāmākua, County of Hawai'i, I would like to express our support of SB2963, Proposed SD 1.

Although Hawai'i County does not have a vacation rental ordinance as of yet, SB2963, Proposed SD 1 will support our eventual enforcement of vacation rental units.

I strongly urge the enactment of SB2963, Proposed SD 1.  
Thank you for your time and consideration.

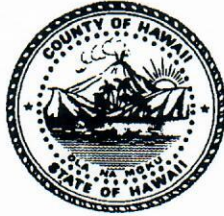
Sincerely,

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Valerie T. Poindexter  
Hawai'i County Council Chairwoman  
District 1, Hāmākua

**Eileen O'Hara**  
Council Member  
Council District 4

**Chair:** Environmental  
Management Committee



**Phone:** (808) 965-2712  
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**Email:** eileen.ohara@hawaiicounty.gov

**Vice Chair:** Planning Committee and  
Agriculture, Water & Energy  
Sustainability Committee

**County of Hawaii**  
**Hawaii County Council**

25 Aupuni Street, Suite 1402 • Hilo, Hawai'i 96720

Senator Donovan M. Dela Cruz  
Chair, Senate Committee on Ways and Means  
Hawai'i State Senate

February 2, 2018

**Re: In Support of Senate Bill 2963, from Hawai'i County Council District 4  
To be heard by WAM on 02-05-18 9:55AM in conference room 211**

Aloha Chair Dela Cruz and Committee Members:

I'm writing to express my support of Senate Bill 2963, which provides that a county shall be eligible to receive \$1,000,000 from the State for the purpose of enforcing all applicable laws and ordinances relating to transient accommodations, provided that no funds shall be released to a county until it has satisfactorily complied with specified conditions.

In Hawai'i County, we are about to entertain legislation that would effectively meet the condition outlined in this bill, although this may be done by establishing a registry that require annual renewal instead of issuing a special use permit. Please be aware that the term 'special use permit' is defined differently in each County's code, so I recommend using the language 'approvals' as the process currently under consideration for expediently issuing approvals will be an annual registry.

Please contact me if you have any questions about my support or knowledge of the subject.

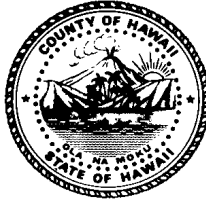
Sincerely,

A handwritten signature in black ink that reads "Eileen O'Hara". The signature is written in a cursive, flowing style.

Eileen O'Hara  
Council Member  
Council District 4



*From the office of -*  
Council Member  
District 3



Office: (808) 961-8396  
Fax: (808) 961-8912  
Email: [sue.leeloy@hawaiicounty.gov](mailto:sue.leeloy@hawaiicounty.gov)

**SUSAN L.K. LEE LOY**

25 Aupuni Street, Hilo, Hawai'i 96720

The Honorable Donovan M. Dela Cruz, Chair  
And members of the Committee on Ways and Means

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

February 2, 2018

Dear Chair Dela Cruz, Chair Wakai, and Joint Committee Members,

I thank you for the opportunity to provide testimony in support of the proposed SD1 draft of SB 2963.

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 rentals by commercial operators irrevocably changes their neighborhoods while reducing the housing supply and by not contributing to the tax base.

While Hawai'i County considers its own efforts to address the impacts of short term rentals, the proposed SD1 draft of SB 2963 provides another tool 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.

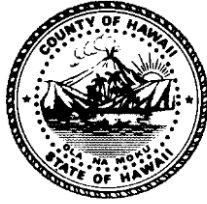
Again, I thank you for the opportunity to provide testimony in support of the proposed SD1 draft of SB 2963, and I ask for your approval.

Aloha Piha,

A handwritten signature in black ink, appearing to read "Sue Lee Loy".

Sue Lee Loy  
Council Member, District 3

Harry Kim  
*Mayor*



Michael Yee  
*Director*

Daryn Arai  
*Deputy Director*

West Hawai'i Office  
74-5044 Ane Keohokālole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
**PLANNING DEPARTMENT**

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

February 2, 2018

Testimony by  
**MICHAEL YEE**  
**Director, County of Hawai'i Planning Department**  
before the  
**COMMITTEE ON WAYS AND MEANS**  
**COMMITTEE ON ECONOMIC DEVELOPMENT**  
**Monday, February 5, 2018, 9:55 AM**  
**State Capitol, Conference Room 211**  
**in consideration of**  
**SB 2963**  
**Relating to Transient Accommodation**

The County of Hawai'i Planning Department offers testimony in **SUPPORT** of Senate Bill 2963, Relating to Transient Accommodation.

Although, Hawai'i County does not have a transient vacation rental ordinance at this time, SB 2963 will support our eventual enforcement of illegal vacation units; therefore, we urge your committee to pass this bill.

Thank you for the opportunity to provide testimony.

**COUNTY COUNCIL**

Mel Rapozo, Chair  
Ross Kagawa, Vice Chair  
Arthur Brun  
Mason K. Chock  
Arryl Kaneshiro  
Derek S.K. Kawakami  
JoAnn A. Yukimura



**OFFICE OF THE COUNTY CLERK**

Jade K. Fountain-Tanigawa, County Clerk  
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188  
Facsimile: (808) 241-6349  
E-mail: cokcouncil@kauai.gov

**Council Services Division**  
4396 Rice Street, Suite 209  
Lihu'e, Kaua'i, Hawai'i 96766

February 2, 2018

**TESTIMONY OF MEL RAPOZO  
COUNCIL CHAIR, KAUAI COUNTY COUNCIL  
ON**

**SB 2963, RELATING TO TRANSIENT ACCOMMODATIONS**

Senate Committee on Ways and Means

Senate Committee on Economic Development, Tourism, and Technology

Monday, February 5, 2018

9:55 a.m.

Conference Room 211

Dear Chair Dela Cruz, Chair Wakai, and Members of the Committees:

Thank you for this opportunity to provide testimony in strong support of SB 2963, Relating to Transient Accommodations. My testimony is submitted in my individual capacity as Chair of the Kaua'i County Council.

This measure strikes a fair balance between insuring vacation rental transient activities pay their fair share in taxes and allowing the Counties to not be placed at a disadvantage in the regulation of their zoning laws. The enhanced County zoning authority in this bill will help us to hold illegal vacation rental operators responsible. The effect of this measure is 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.

For the reasons stated above, I urge the Senate Committee on Ways and Means and the Senate Committee on Economic Development, Tourism and Technology to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

MEL RAPOZO  
Council Chair, Kaua'i County Council

AMK:aa



**Justin F. Kollar**  
Prosecuting Attorney



**Rebecca Vogt Like**  
Second Deputy

**Jennifer S. Winn**  
First Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

3990 Ka'ana Street, Suite 210, Līhu'e, Hawai'i 96766  
808-241-1888 ~ FAX 808-241-1758  
Victim/Witness Program 808-241-1898 or 800-668-5734

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THE HONORABLE DONAVAN DELA CRUZ AND GLENN WAKAI, CHAIRS  
SENATE COMMITTEES ON WAYS AND MEANS, AND ECONOMIC  
DEVELOPMENT, TOURISM, AND TECHNOLOGY

Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawai'i

February 5, 2018

Chairs Dela Cruz and Wakai, Vice Chairs Keith-Agaran and Taniguchi, and  
Members of the Committees:

The County of Kaua'i Office of the Prosecuting Attorney offers testimony in  
STRONG SUPPORT of SB 2963, PROPOSED SD 1. This bill strikes a fair  
balance; ensuring vacation rental transient activities pay their fair share in  
taxes and preventing the Counties from being disadvantaged in the regulation  
of their zoning laws. We further appreciate enhanced criminal penalties relating  
to illegal vacation rental usage, while recognizing the complicity of various  
online search engines and aggregators.

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.

Accordingly, the Office of the Prosecuting Attorney, County of Kaua'i, requests  
that this measure be PASSED.

Thank you very much for the opportunity to testify.

**Bernard P. Carvalho, Jr.**  
Mayor



**Michael A. Dahilig**  
Director of Planning

**Wallace G. Rezendes, Jr.**  
Managing Director

**Ka'āina 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 on Ways and Means and Economic Development,  
Tourism, and Technology**

**SB2963 Relating to Transient Accommodations**  
**PROPOSED SD1**

Wednesday, January 31, 2018 at 9:30 am Conference Room 415

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

Chairs Dela Cruz, Wakai 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 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.

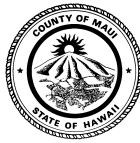
We respectfully urge your committees to pass this most timely and important piece of legislation. Mahalo for your consideration.

Council Chair  
Mike White

Vice-Chair  
Robert Carroll

Presiding Officer Pro Tempore  
Stacy Crivello


Councilmembers  
Alika Atay  
Elle Cochran  
Don S. Guzman  
Riki Hokama  
Kelly T. King  
Yuki Lei K. Sugimura



**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

February 3, 2018

TO: The Honorable Donovan M. Dela Cruz, Chair  
Senate Committee on Ways and Means  
  
The Honorable Glenn Wakai, Chair  
Senate Committee on Economic Development, Tourism, and Technology

FROM: Mike White  
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 5, 2018; TESTIMONY IN SUPPORT WITH COMMENTS OF SB 2963 SD1, RELATING TO TRANSIENT ACCOMODATIONS**

Thank you for the opportunity to testify in **support with comments** of this important measure. The main purpose of this bill is to allow transient accommodations brokers to register as a tax collection agent on in behalf of all of its operators and plan managers with certain requirements.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. Illegal transient vacation rentals remain a problem for both the counties and the State. It is estimated that thousands of illegal units are operating throughout the State, with over \$100 million in general excise tax and transient accommodations tax going uncollected.
2. The counties currently have no recourse in preventing transient accommodation brokers from listing illegal rentals. Operators with listings on their platforms are allowed to conceal their rental locations, and operators are not required to prove compliance with local laws. Under these conditions, enforcement has been an ongoing challenge.
3. This proposal creates a clear process for the collection of taxes for online booking sites and requires collection agents to provide verification and a statement confirming compliance with all pertinent state and county land

use and tax laws. **The counties should also be privy to the county related verification information submitted to the State.**

4. It is critical that the information obtained by the State be shared with the counties. This is the only way to achieve comprehensive regulation of short-term rentals.
5. **Key information on operators however, should be available to counties when an online operator registers with the State. Waiting for critical information to be available until an annual or periodic report will unnecessarily restrict county enforcement efforts.**
6. Maui County has made revisions to the Maui County Code to enhance enforcement. A request for proposal was recently issued in attempts to explore more sophisticated short-term rental enforcement options. However, to be successful, it will take not only critical information, but adequate resources to protect legally licensed operators who are paying appropriate taxes and following land use laws. Funding assistance from the State is requested and greatly needed.

For the foregoing reasons, I **support** this measure and I hope that additional elements can be added to strengthen this bill.



Senate Committee on Ways and Means  
Chair Donovan M. Dela Cruz  
Vice Chair Gilbert S.C. Keith-Agaran

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

Monday, February 5, 2018 10:00 am  
Conference Room 211 State Capitol

**TESTIMONY ON BEHALF OF AIRBNB RE: [SB 2963, SD1](#)**

Dears Chairs, Vice-Chairs, and members of the Committees:

I write in support of the intent of SB 2963 SD1, though we have reservations about numerous provisions that will render the law unenforceable.

SB 2963 SD1 would allow Airbnb and similar platforms to collect and remit Transient Accommodations Tax (TAT) and General Excise Tax (GET) on behalf of our host communities. Airbnb is committed to being a partner with the State of Hawaii by collecting and remitting our fair share of taxes. However, SB 2963 SD1 includes provisions that are inconsistent with federal law as it imposes liability on website operators for user-generated content. These provisions do not assist in the collection of taxes and conflict with the intent of this legislation. Additional testimony will be submitted by our local counsel that will discuss in more detail the legal infirmities with the bill.

Because of the legally unenforceable provisions included in the bill, it is highly unlikely that any platform would voluntarily agree to collect and remit taxes in accordance with this bill, thus rendering the intent of the the majority of the bill moot. In that circumstance the state would not be collecting additional taxes and would make little progress toward improving enforcement on alternative accommodations.

The provisions of SB 2963 SD1 that allow platforms to voluntarily collect and remit taxes, which we endorse, would simplify administration for both the Department of Taxation and our host community and reduce the State of Hawaii's enforcement burden in ensuring tax compliance. Airbnb first began collecting and remitting hotel and tourist taxes from guests on behalf of hosts in San Francisco and Portland in 2014. We are now successfully collecting and remitting taxes in more than 350 jurisdictions across the world, including San Francisco, Los Angeles, Amsterdam, Chicago, Malibu, Oakland, Washington D.C., Palo Alto, Paris, Philadelphia, San Diego, San Jose, and nearly 20 states, including Washington, Colorado, Oregon, Connecticut, North and South Carolina, Vermont, Florida, and Arizona.

During testimony presented on a similar bill during the 2017 legislative session the Department of Taxation (DOTAX) in discussing the ability of platforms to collect and remit taxes on behalf of their hosts stated the following: “Permitting transient accommodations brokers to act as tax collection agents[...] promotes efficient tax collection by easing the burden of processing, auditing, and collecting from individual taxpayers.” (Testimony before the Senate Committee on Economic Development, Tourism, and Technology, 3/22/2017) In SB 2963 SD1, as in previous bills, online platforms would have the option to register as the single taxpayer, assuming full responsibility with respect to applicable taxes on its platform and using its tax ID number to meet Act 204’s posting requirement.

Additionally, we believe that the most successful approach to addressing concerns about short-term rentals while preserving their important contribution to the Hawaii economy is to take a comprehensive approach that enables the individual counties to address land use issues as appropriate for their jurisdictions and the state to regulate the industry’s fiscal impacts. To that end, we have been working closely and been in contact with a number of officials at each county to discuss ways to regulate the industry along with better enforcement tools to protect housing stock and neighborhood integrity. Common sense regulations that allows local residents and property owners to share their homes in a responsible manner enables the state to reap the significant fiscal benefits of the alternative accommodation market.

One concerning addition to this bill is the change to classify the violation of zoning ordinances as a Class C Felony. Many Hawaii residents help to deal with the state’s high cost of living by renting out an extra room in their home part time. Even this act by Hawaii residents, of using an a spare room in their as a way to make a little extra money would become a felony crime, which on its face seems too extreme.

The economic benefit of alternative accommodations to the state’s economy must be noted. A report released this week by the Hawaii-based economic consulting firm Kloninger & Sims (which has been shared previously with the committee) outlines the alternative accommodation industry’s contributions to the state’s economy and local residents in 2016.

- Alternative accommodations generated \$5.1 billion in economic activity and helped support 34,000 jobs.
- As the third-largest alternative accommodations platform in Hawaii, Airbnb guests generated \$649 million in lodging and non-lodging spending, a 54% increase over 2015.
- Airbnb guests spent an average of \$271 per person per day while in Hawaii in 2016, more than any other accommodations category.
- The median accommodation generated between \$3,573 and \$5,952 for hosts across counties-- that represents the equivalent of 6% to 8% raise to the local median household income-- to cope with Hawaii’s high cost of living.

The report also found that lodging and non-lodging spending by guests staying at alternative accommodations would have generated over \$120 million in GET and TAT statewide in 2016.

That includes \$43 million in total taxes from Airbnb hosts and guests -- \$21 million from non-lodging spending and \$22 million from accommodations revenue. Airbnb guests and hosts would have generated more than \$30 million in accommodations taxes in 2017 alone. If the state had a system in place to allow platforms to collect and remit these taxes from alternative accommodations hosts, this tax revenue would be more fully and effectively captured.

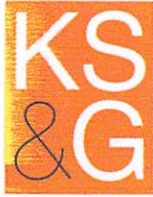
As we move forward, we remain 100% committed to working with local leaders on common sense rules for home sharing. We are confident that we can work together on sensible and modern regulations that reflect the new economy, facilitate compliance, and make local communities stronger.

We remain committed to partner with the state and local governments. We are hopeful that you will allow our hosts to pay their fair share of taxes. At the same time we are committed to working with all interested parties to make home sharing work for local communities and our hosts to the benefit of everyone.

Regards,

A handwritten signature in black ink, appearing to read "Matt Middlebrook", with a long horizontal flourish extending to the right.

Matt Middlebrook  
Head of Public Policy  
Hawaii



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Caycle K. G. Wong

February 3, 2018

SENATE COMMITTEE ON WAYS AND MEANS

Chair Donovan M. Dela Cruz, Vice Chair Gilbert S.C. Keith-Agaran

Via email to: [WAMtestimony@capitol.hawaii.gov](mailto:WAMtestimony@capitol.hawaii.gov); [etttestimony@capitol.hawaii.gov](mailto:etttestimony@capitol.hawaii.gov)

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND  
TECHNOLOGY

Chair Glenn Wakai, Vice Chair Brian T. Taniguchi

Monday, February 5, 2018, 9:55 a.m.  
Conference Room 211 State Capitol

Re: TESTIMONY ON BEHALF OF AIRBNB SUPPORTING THE INTENT  
BUT PROVIDING COMMENTS ON SERIOUS LEGAL CONCERNS  
RE S.B. 2963 S.D. 1 PROPOSED

Dear Senators:

We write on behalf of our client, Airbnb, to support the intent but provide comments regarding serious legal concerns as to S.B. 2963 S.D. 1 Proposed. 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.

S.B. 2963 S.D. 1 Proposed contains problematic language that will render it invalid, unworkable, and unenforceable. The intended purpose of S.B. 2963 S.D. 1 Proposed is to address the issue of taxation relating to transient accommodations. S.B. 2963 S.D. 1 Proposed 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. S.B. 2963 S.D. 1 Proposed also requires a transient accommodations broker to obtain and publish certain information in any online advertisement, and verify that operators and plan managers are complying with all land use laws.



Unfortunately, the current language of S.B. 2963 S.D. 1 Proposed violates two federal laws: (1) the federal Communications Decency Act, 47 U.S.C. § 230 (“*Section 230*” 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. S.B. 2963 S.D. 1 Proposed is therefore preempted by federal law, and would thus be unenforceable if passed. In addition, S.B. 2963 S.D. 1 Proposed 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 S.B. 2963 S.D. 1 Proposed 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](http://www.oregonlive.com/portland/index.ssf/2017/03/post_588.html).

S.B. 2963 S.D. 1 Proposed impermissibly violates the CDA.

Section 8 of S.B. 2963 S.D. 1 Proposed adds a new section to Section 237. Section 9 of S.B. 2963 S.D. 1 Proposed adds a new section to Section 237D. Both new sections appear to contain the same proposed language. The new section (a) under both provisions of Sections 8 and 9 of S.B. 2963 S.D. 1 Proposed (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). Any tax collection agreement entered into pursuant to this section shall be subject to and in accordance with all applicable provisions of state law and county ordinances and shall not permit a tax collection agent, nor any operator or plan manager conducting business through the tax collection agent, to opt out of any requirements or obligations under state law or county ordinance.”

The new section (i) under both provisions of Sections 8 and 9 of S.B. 2963 S.D. 1 Proposed (applicable to both Sections 237 and 237D) provides that:

“(i) All registered tax collection agents, **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 or plan manager’s transient accommodations number and local contact information** required under section 237D-4, **and include this information in the advertisement**, in compliance with 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, S.B. 2963 S.D. 1 Proposed requires that before publishing any online advertisement, a transient accommodations broker must obtain 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.

S.B. 2963 S.D. 1 Proposed 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. S.B. 2963 S.D. 1 Proposed 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. S.B. 2963 S.D. 1 Proposed thus penalizes hosting platforms for the actions of their users. S.B. 2963 S.D. 1 Proposed 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 15 of S.B. 2963 S.D. 1 Proposed 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.”

This section purports to impose liability on all 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.

Section 10 of S.B. 2963 S.D. 1 Proposed 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, that 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.**

**(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.)”**

S.B. 2963 S.D. 1 Proposed 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.) S.B. 2963 S.D. 1 Proposed 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, S.B. 2963 S.D. 1 Proposed 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.

S.B. 2963 S.D. 1 Proposed impermissibly violates the SCA.

Section (g) under both provisions of Sections 8 and 9 of S.B. 2963 S.D. 1 Proposed (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 [or 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 [or 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 name, address and license identification number of each operator or plan manager, (2) the address of each transient accommodation listing on the platform; and (3) 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, S.B. 2963 S.D. 1 Proposed requires an internet platform to disclose the internet platform’s private information 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, S.B. 2963 S.D. 1 Proposed violates the SCA, is preempted, and is unenforceable.

S.B. 2963 S.D. 1 Proposed impermissibly violates the U.S. Constitution and the Hawaii State Constitution.

In addition, S.B. 2963 S.D. 1 Proposed 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[.]”<sup>1</sup> 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.”).

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, S.B. 2963 S.D. 1 Proposed violates the Fourth

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<sup>1</sup> 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.”)

Amendment by requiring an internet platform to disclose private, protected information without a warrant.

Conclusion.

For the foregoing reasons, the problematic language in S.B. 2963 S.D. 1 Proposed renders it invalid. We therefore urge that S.B. 2963 S.D. 1 Proposed be held. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'DLouie', with several loops and a long horizontal stroke extending to the right.

DAVID M. LOUIE

for

KOBAYASHI SUGITA & GODA, LLP





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## Testimony in Support of SB 2963 SD 1

February 3, 2018

The Honorable Donovan M. Dela Cruz  
Chair, Committee on Ways and Means  
Hawaii State Senate  
Hawaii State Capitol  
415 South Beretania Street, Room 208  
Honolulu, Hawaii 96813-2425

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

Dear Honorable Chair Dela Cruz and Honorable Members of the Senate Committee on Ways and Means, and Honorable Chair Wakai and Honorable Members of the Senate Committee on Economic Development, Tourism, and Technology:

Hilton strongly supports SB 2963 SD 1.

Hilton also submitted testimony in support of SB 2999 and strongly supports the intent of that bill. SB 2963 SD 1 improves upon SB 2999 by revising certain provisions to directly address Airbnb's legal challenges and to strengthen the State's position with respect to enforceability on the basis of the federal Communications Decency Act (CDA) and Stored Communications Act (SCA). SB 2963 also strengthens the abilities of the counties to enforce land use laws intended to protect Hawaii's communities.

### CDA

SB 2963 SD 1 directly addresses Airbnb's CDA challenge to SB 2999 by removing the delisting requirement for transient accommodations brokers. SB 2963 SD 1 also follows the model of San Francisco Ordinance 178-16 (effective September 1, 2016), by holding transient accommodations brokers and hosting platforms liable only for their own conduct.







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San Francisco Ordinance 178-16 made it a misdemeanor for hosting platforms to collect booking fees on illegal vacation rentals in San Francisco. On November 8, 2016 in *Airbnb, Inc. v. City & County of San Francisco*, Case No. 3:16-cv-03615-JD, the U.S. District Court for the Northern District of California found that Airbnb and Homeaway were unlikely to prevail on the merits of their CDA challenge to Ordinance 178-16 because Ordinance 178-16 held Airbnb and Homeaway liable only for their own conduct, namely, providing, and collecting a fee for, booking services in connection with illegal rentals.

SB 2963 D1 similarly holds transient accommodations brokers and hosting platforms liable only for their own conduct in brokering deals in Hawaii, including, specifically: (1) for providing, and collecting a fee for, booking services for illegal transient accommodations, (2) for engaging in business with transient accommodations operators or plan managers that are not in compliance with applicable state and county laws (including land use, tax, and professional licensing laws), and (3) for engaging in business on behalf of transient accommodations operators or plan managers with persons or entities that provide property management or activities services and that are not in compliance with state or county laws.

Hilton believes that, based on the district court's ruling on San Francisco Ordinance 178-16, SB 2963 SD 1 is likely to withstand a CDA challenge.

## SCA

The SCA contains a separate provision for mandatory disclosures (18 U.S.C. § 2703) and a separate provision for voluntary disclosures (18 U.S.C. § 2702). Airbnb's SCA challenge to SB 2999 was based on the provision for mandatory disclosures.

However, the reporting requirements in SB 2963 SD1 (and SB 2999) constitute voluntary disclosures because they apply only if a hosting platform voluntarily chooses to register as a tax collection agent, thereby voluntarily submitting to the reporting requirements.

Section 2702 of the SCA expressly permits voluntary disclosure of information, with the consent of the originator. Accordingly, SB 2963 D1 requires that any transient accommodations broker that registers as a tax collection agent obtain consent from its operators and plan managers in Hawaii to the applicable reporting disclosures. Hilton believes that SB 2963 SD 1 fully complies with the SCA requirements for voluntary disclosures.

Notably, under its settlement agreement with the City and County of San Francisco, Airbnb agreed to collect and transmit certain information about its hosts to San Francisco, including without limitation: the host's name and contact information, monthly rent, business registration number, current driver's license or state ID card and proof of residence (proof of homeowner's tax exemption, utility bill, vehicle registration, etc.), an affidavit, and quarterly reporting on the number of nights a residential unit has been rented as a short-term residential rental (see San Francisco Settlement



CONRAD

canopy



CURIO



TAPESTRY



Hilton Garden Inn

Hampton



HOMEWOOD SUITES

HOME2

Hilton Grand Vacations





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Agreement Section 1.08.C and Exhibit B). Airbnb's accommodation of these reporting requirements in San Francisco suggests that Airbnb has been able to successfully implement a mechanism for host consent, in order to comply with the voluntary disclosure requirements of the SCA. It should be able to do the same for its hosts in Hawaii.

Airbnb also challenged SB 2999 on the basis of the 4<sup>th</sup> Amendment and its Hawaii counterpart. However, neither SB 2999 nor SB 2963 SD 1 implicates the 4<sup>th</sup> Amendment because all disclosures by transient accommodations brokers voluntarily registering as tax collection agents are voluntary. The 4<sup>th</sup> Amendment does not prohibit voluntary disclosures.

### County Enforcement

SB 2963 SD 1 facilitates county enforcement by allocating funding to the counties upon establishment of a process for providing proof of compliance. SB 2963 SD 1 also allows for sharing of reporting information with the counties, which is crucial to the counties' ability to enforce local land use laws.

SB 2963 SD 1 continues to build upon the measured approach of SB 2999. It ensures the collection of tax revenues while preserving and facilitating the counties' ability to enforce local land use laws. It also addresses Airbnb's legal challenges to SB 2999 and strengthens the State's position with respect to enforceability.

Thank you for your consideration of Hilton's position.

Mahalo nui loa,

Gerard C. Gibson  
Area Vice President  
Hilton Hawaii



# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, County Vacation Rental Enforcement

BILL NUMBER: SB 2963; HB 2605 (Identical)

INTRODUCED BY: SB by WAKAI, ESPERO, K. KAHELE, KIDANI, Taniguchi; HB by ONISHI, CACHOLA, CULLEN, FUKUMOTO, GATES, KONG, LUKE, NAKASHIMA, OHNO, SAIKI, WARD, WOODSON, YAMASHITA, Ito, Keohokalole, Nakamura

EXECUTIVE SUMMARY: Provides that a county shall be eligible to receive \$1,000,000 from general revenues for the purpose of enforcing all applicable laws and ordinances relating to transient accommodations, provided that no funds shall be released to a county until it has satisfactorily complied with specified conditions.

SYNOPSIS: Adds an uncodified section to provide that a county may receive \$1 million 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 thirty 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 thirty 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).

EFFECTIVE DATE: July 1, 2018.

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 \$1 million one-time payout. Not bad for something the counties should have done anyway if they were serious about enforcing their zoning and land use laws.

Digested 2/2/2018

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** GENERAL EXCISE, TRANSIENT ACCOMMODATIONS, MISCELLANEOUS, Transient Accommodations Brokers as Tax Collection Agents; Amnesty

**BILL NUMBER:** SB 2963, Proposed SD1

**INTRODUCED BY:** Senate Committees on Ways and Means and Economic Development, Tourism, and Technology

**EXECUTIVE SUMMARY:** Part I enacts an amnesty program. Amnesty programs have been tried in various states with mixed results, and has been tried in Hawaii once. Amnesty programs in general can erode taxpayer confidence in the system and should be used with caution. Part II allows a transient accommodations broker to serve as a collection agent for general excise and transient accommodations taxes. This type of arrangement would probably enhance collection of taxes because of the difficulty of policing individual owners.

**SYNOPSIS:** Part I adds a series of uncodified sections that direct the department of taxation to develop and administer a one-time tax amnesty program which is to begin no later than October 31, 2018, and that shall be completed before January 1, 2019, and which will apply to all tax types administered by the department under title 14, HRS.

The amnesty program in general will apply to those who have not filed returns or who have underreported liability. If a taxpayer is accepted into the program, the department is not to pursue criminal prosecution or civil penalties. Interest will be paid, and the taxpayer will waive any right to further contest the liability. The tax due is normally paid in full before the end of the amnesty period, but in cases of severe hardship the taxpayer may pay 25% at the time of application and the balance in monthly installments mutually agreed upon.

## Part II:

Adds a new section each to HRS chapter 237 and chapter 237D allowing the director of taxation to permit a transient accommodations broker to register as a tax collection agent on behalf of all of its operators and plan managers. However, the tax collection agreement shall be subject to any requirements under state or county law, and does not permit the broker, operator, or plan manager to opt out of any requirements or obligations under state or county law. Defines “operator,” “plan manager,” and “transient accommodations broker” the same as in the TAT law.

The department is required to accept or deny an application for registration within thirty days. Upon acceptance as a tax collection agent, the broker shall report, and collect, and pay over the tax due on behalf of all its operators and plan managers as it relates to activity booked through the broker. Registration does not relieve the broker from any of its own tax obligations, and the operators and plan managers are not protected as to any business activity other than that booked through the broker. Furthermore, owners and plan managers are subject to all requirements of state and law (including county zoning law) as if the agreement did not exist.

A registered broker shall be issued separate licenses with respect to taxes payable on behalf of its operators and plan managers in its capacity as a registered transient accommodations broker tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities. The broker is to file periodic returns reporting income and exemptions as collection agent separately from its own business activity.

A broker may cancel its registration by delivering a written cancellation notice to the department and its customers; the cancellation will be effective no earlier than 90 days after delivery of the notice. The department may also cancel a registration for any cause, including violations of the tax laws or a breach of the registration agreement.

Requires a broker, before placing an advertisement for a property for lease or rent on behalf of an operator or plan manager, to: (1) notify the operator or plan manager that the subject property must be in compliance with applicable state and county land use laws; (2) require the operator or plan manager to provide the broker with the operator or plan manager's transient accommodations number and local contact information required under section 237D-4, and to include this information in the advertisement, in compliance with section 237D-4; (3) require the operator or plan manager to provide the broker with verification of compliance with state land use laws and county land use ordinances in the form of a written certification, verification, or permit, as applicable, issued by the appropriate county agency; and (4) require the operator or plan manager to provide a statement to the transient accommodations broker confirming compliance with all land use laws and ordinances. If a broker is officially notified that a property being advertised is out of compliance, the broker is required to remove the advertisement.

Provides that returns filed on behalf of an operator may be disclosed to a mayor or county planning director (in addition to county tax officials) to ensure compliance with local land use and zoning laws.

Adds a new section to chapter 481B, HRS, making it a class C felony for a transient accommodations broker (whether or not registered for tax collection under any of the previously mentioned sections) to:

- (1) 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, that 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; or
- (2) On behalf of an operator or plan manager, 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.

Makes conforming amendments to sections 46-1.5, 46-4, 237-34, and 237D-13, HRS.

Provides that when a county establishes a process for providing verification of compliance with its land use ordinances, the county will get \_\_\_% of the TAT and GET revenues collected in that county for that fiscal year. This appears to be a one-time award.

EFFECTIVE DATE: July 1, 2018.

STAFF COMMENTS:

### **Amnesty**

Tax amnesty is a device that has become a common component of state tax administration in modern times. One exhaustive study of amnesty systems in 2012 (Mikesell and Ross, *Fast Money? The Contribution of State Tax Amnesties to Public Revenue Systems*, 65 National Tax Journal 529 (2012) (available at <http://www.ntanet.org/NTJ/65/3/ntj-v65n03p529-62-fast-money-contribution-state.pdf>) argues that most of the amnesty program features that bring in the most revenues also conflict with or undermine the goals of the tax administration system. For example, it has been argued that amnesty can lead the public to perceive the tax system as unfair. If people who have been noncompliant can get back into business as usual with little or no economic disadvantage, those who play by the rules, or who had to bear the brunt of penalties and interest, may feel that they have been betrayed.

Hawaii has tried tax amnesty once before, in an administratively authorized program called “Fresh Start.” The Department of Taxation’s 2009 annual report described the program:

For the first time in State history, amnesty was offered to Hawaii taxpayers. Under the Fresh Start Program, qualified taxpayers were granted amnesty from the assessment of penalties and possible criminal prosecution, and were assessed interest at the rate of 4% per year, rather than 8% per year, on the balances owed.

To qualify, taxpayers were required to file all previously unfiled returns and/or amended returns to report previously unreported income, and pay the full amount of tax and reduced interest due. Only returns filed for tax periods ending on or before December 31, 2007, were eligible for amnesty. Taxpayers who were already being audited or investigated, in a collection program, or in litigation with the Department were ineligible for amnesty.

Though the Fresh Start Program was only in effect from May 27, 2009, through June 26, 2009, it resulted in the filing of 2,693 tax returns with the Office Audit Branch of the Compliance Division, and the payment of \$14.4 million in additional taxes. Of the total, 1,600 returns and \$8.4 million in collections came from taxpayers who qualified for the program; the remainder came from taxpayers who did not qualify, but who nevertheless came forward to file their returns and pay at least a portion of the amounts owed, or were for tax periods ending after December 31, 2007.

Department of Taxation, 2008-2009 Annual Report, at 14 (available at <http://files.hawaii.gov/-tax/stats/stats/annual/09annrpt.pdf>).

The program proposed here is designed differently from the 2009 program in that taxpayers under audit or on appeal would be eligible for the program. Certainly, the program proposed promises to bring in more revenue, but at some level of intangible cost.

***Proposed Amendment:*** We recommend deletion of the last sentence of section 6, which now provides that all funds collected shall be remitted to the general fund. Many of the tax types that could be collected under this program are earmarked to various special funds, or, in the case of the county surcharge on GET, are not the state's money at all. Without the last sentence of section 6, the disposition of any revenues will follow the legislative directions provided for the tax type that is collected.

### **Tax Collection by Transient Accommodations Brokers**

Act 143, SLH 1998, amended HRS section 237-9 to allow multi-level marketing companies to act as agents to collect and pay over GET on behalf of their independent entrepreneurs. At the time, it was considered beneficial for the marketing companies to collect and pay over tax as opposed to having the Department of Taxation chase down a myriad of independent owners with varying degrees of tax compliance among them.

This bill presents an opportunity for the same logic and policy considerations to apply to transient vacation rental (TVR) activity operating through transient accommodation brokers such as AirBnB, Flipkey, Homeaway, and VRBO, except that the stakes may be a little higher because TAT as well as GET is being collected. This bill would appear to be necessary or desirable to enhance the Department's collection ability given the limited resources available for all of state government including the Department.

TVR activity is a business and the dollars earned in that business are subject to Hawaii state taxes. Specifically, General Excise Tax (GET) and Transient Accommodations Tax (TAT) both apply, so those hosts that are in this business need to register appropriately and pay these taxes. But alas, not everyone does. So, the bill proposes to allow the broker to register with the Department of Taxation and to remit the GET and TAT to the State on behalf of the hosts. Once registered, any time a host earns money on the broker's platform, the broker will pay the taxes and will pay over the balance to the host. The concept is like withholding, with which those of us who receive a paycheck are quite familiar: we work for an employer, the employer pays us our wages, but the employer deducts some taxes and pays them to the Department of Taxation and IRS.

A similar measure, HB 1850 (2016), passed two years ago but was vetoed by Governor Ige. The principal objection concerns county-level restrictions on property use. Some TVR activity violates county zoning laws. Some counties, as well as neighboring residents, see withholding as described in this bill as enabling hosts to hide illegal activities from county law enforcement. Some people have gone further. They blame TVR hosts for wrecking the sanctity of neighborhoods with an unending stream of tourists or for yanking housing units off the market in the name of greed, resulting in stratospheric housing prices that are yet another crippling blow to hardworking families struggling to make ends meet. Then, they turn to the brokers and demand



that the brokers stop encouraging and facilitating such illegal, anti-societal, and morally depraved activity.

But do we really want a withholding agent to be our brother's keeper? Is it right to ask our employers to call up our banks and credit card companies to see if we are current on our mortgage and paying our bills on time? If we aren't timely or break the law, should we blame our employers for facilitating illegal or immoral activity by paying us our wages (after the tax authorities have, of course, gotten their share) instead of first making sure that those monies are applied to payment of our debts?


At some point, we need to recognize that TVR hosts, like most employees, are adults. They have chosen to go into business, and they are responsible for running their business and all that it entails. They, as the property owners, are answerable to the counties for the use or misuse of those properties. Certainly, the brokers need to be aware of and compliant with laws that pertain to their business if they are going to be doing business here. But it seems a bit much to ask the brokers to be policemen for the counties when the counties, for whatever reason, can't or won't enforce their own zoning laws.


Ultimate responsibility as to both State tax and county zoning laws rests with the owners of the accommodations, not the broker. Owners may be in varying degrees of compliance with the zoning laws just as they are in varying degrees of compliance with the tax laws. The broker is not in an efficient position to police the former, but effectively can do something about the latter because money from the transient guests flows through the broker's system. That is all this bill tries to address.


As a technical matter, the bill in its current form creates a "chicken and egg" problem. Most counties do not presently have a process in place to verify compliance with existing zoning and land use laws, which is why the bill rewards them when they establish one. However, clients of a broker are not permitted to advertise until they receive a permit or similar evidence from the county. If a broker is not permitted to advertise, owners and operators will have no reason to list with the broker and will go elsewhere, perhaps to a broker that has not agreed (and has no intention) to collect tax on behalf of its clients.

This version of the bill contains a new penal section prohibiting transient accommodations brokers from engaging in business with local operators that are not in compliance with all state laws and county ordinances, under pain of being convicted of a class C felony. It is questionable whether this penal section will have substantial effect, because most transient accommodations brokers can claim they have no nexus with or presence in Hawaii sufficient to permit imposition of criminal liability. They can claim, with some justification, that they are merely taking advantage of instrumentalities of interstate commerce, such as the Internet, with no geographic boundaries, and only Congress has jurisdiction to regulate such instrumentalities within this country.



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February 5, 2018

**The Honorable Donovan M. Dela Cruz, Chair**  
Senate Committee on Ways and Means

**The Honorable Donovan M. Dela Cruz, Chair**  
Senate Committee on Economic Development, Tourism and Technology  
State Capitol, Conference Room 211

**RE: S.B. 2963, Proposed S.D.1, Relating to Transient Accommodations**

**HEARING: Monday, February 5, 2018, at 9:55 a.m. in Conference Room 211**

Aloha Chair Dela Cruz, Chair Wakai, and Members of the Committees,

I am Ken Hiraki, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 9,500 members. While HAR generally supports the intent of Senate Bill 2963, we **oppose** the language in section 12 (pages 52-53), that authorizes counties to adopt ordinances to amortize or phase our transient vacation rental units and request that this language be deleted from the measure.

While we understand the argument for regulating non-conforming uses, it is important to note that there are many property owners who have been legitimately and responsibly running Transient Vacation Rentals ("TVR.")



Counties should have the power to adequately control what goes on in their communities. However, we believe that counties already have the authority they need to regulate TVRs via their existing powers to enact zoning ordinances and enforce those ordinances.


For example, in 2009, the County of Maui adopted a permitting system that would allow TVRs and Bed and Breakfast operations ("B&Bs") in residential areas, and established caps on the number of permitted units in specific neighborhoods and districts. Maui County Council has the authority to either repeal the vacation rental permitting ordinances, or issue a moratorium on new permits until more residential housing is available.

Kauai for example, in 1982, established what are called "visitor destination areas" ("VDA") via the passage of Ordinance 436. The primary reason for establishing VDA's was to designate areas on the island where resort activity would be permitted, and to preserve





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other areas of the island for residential, agricultural or other non-resort commercial and non-commercial uses.

Today, TVR's can operate legally within VDA's and can operate outside of the VDA only if a nonconforming use certificate is obtained by the County of Kauai Planning Department. This certificate must have been obtained by March 30, 2009 and the County will permit no additional TVR's outside the VDA after that date.

For the foregoing reasons, we believe counties already have existing powers to enact zoning ordinances and enforce them.

In addition, we also **oppose** the language in section 12 (p. 51, lines 1-12) that imposes automatic penalties for a transient accommodations broker who fails to remove an advertisement within seven days of receiving a notice of noncompliance. As a matter of fairness, we request that the word "**shall**" found on lines 1 and 3 be changed to "**may**" to allow for greater discretion in withholding penalties when noncompliance may be due to situations beyond a transient accommodation broker's control such as an emergency situation when a broker is hospitalized and is unable to respond in a timely basis or in a situation when he/she may be out of the country, etc. In other words, a non-compliant ad should not automatically equal a civil fine of \$25,000 to \$100,000 without some opportunity for inquiry as to the reason for noncompliance.


Mahalo for the opportunity to testify on this measure.





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February 5, 2018

**The Honorable Donovan M. Dela Cruz, Chair**  
Senate Committee on Ways and Means

**The Honorable Glenn Wakai, Chair**  
Senate Committee on Economic Development, Tourism and Technology  
State Capitol, Conference Room 211

**RE: S.B. 2963, Proposed S.D.1, Relating to Transient Accommodations**

**HEARING: Monday, February 5, 2018, at 9:55 a.m. in Conference Room 211**

Aloha Chair Dela Cruz, Chair Wakai, and Members of the Committees,

I am Ken Hiraki, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 9,500 members. While HAR generally supports the intent of Senate Bill 2963, we **respectfully request that** the language in section 12 (pages 52-53), that authorizes counties to adopt ordinances to amortize or phase out transient vacation rental units be deleted from the measure.

While we understand the argument for regulating non-conforming uses, it is important to note that there are many property owners who have been legitimately and responsibly running Transient Vacation Rentals ("TVR.")

Counties should have the power to adequately control what goes on in their communities. However, we believe that counties already have the authority they need to regulate TVRs via their existing powers to enact zoning ordinances and enforce those ordinances.



For example, in 2009, the County of Maui adopted a permitting system that would allow TVRs and Bed and Breakfast operations ("B&Bs") in residential areas, and established caps on the number of permitted units in specific neighborhoods and districts. Maui County Council has the authority to either repeal the vacation rental permitting ordinances, or issue a moratorium on new permits until more residential housing is available.

Kauai for example, in 1982, established what are called "visitor destination areas" ("VDA") via the passage of Ordinance 436. The primary reason for establishing VDA's was to designate areas on the island where resort activity would be permitted, and to preserve other areas of the island for residential, agricultural or other non-resort commercial and non-commercial uses.

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Honolulu, HI 96817

Today, TVR's can operate legally within VDA's and can operate outside of the VDA only if a nonconforming use certificate is obtained by the County of Kauai Planning Department. This certificate must have been obtained by March 30, 2009 and the County will permit no additional TVR's outside the VDA after that date.

For the foregoing reasons, we believe counties already have existing powers to enact zoning ordinances and enforce them.

In addition, we also **recommend amendments** to the language in section 12 (p. 51, lines 1-6) that imposes automatic penalties for a transient accommodations broker who fails to remove an advertisement within seven days of receiving a notice of noncompliance. As a matter of fairness, we request that the word "**shall**" found on lines 1 and 3 be changed to "**may**" to allow for greater discretion in withholding penalties when noncompliance may be due to situations beyond a transient accommodation broker's control such as an emergency situation when a broker is hospitalized and is unable to respond in a timely basis or in a situation when he/she may be out of the country, etc. In other words, a non-compliant ad should not automatically equal a civil fine of \$25,000 to \$100,000 without some opportunity for inquiry as to the reason for noncompliance.

For similar reasons, we also recommend that the "shall" in section 12 (p.51, line 12) that makes a violation a class c felony be changed to the word "may" as well.

Mahalo for the opportunity to testify on this measure.





The Senate  
The Twenty-Ninth Legislature  
Regular Session of 2018

To: Senator Dela Cruz, Chair  
Senator Wakai, Chair

Senator Keith-Agaran, Vice-Chair  
Senator Taniguchi, Vice-Chair

Date: February 5, 2018

Time: 9:30 a.m.

Place: Conference Room 211

**RE: Senate Bill 2963, Relating to Transient Accommodations**

Chairs Dela Cruz 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. SB2963, 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 amends HRS section 237-34 to include counties of the state as persons with material interest in confidential returns and return information.** 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.

**Tax laws not uniformly applied:** The Department of Taxation has established rules for tax compliance that ALL businesses, regardless of nature, abide by. SB2999 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, SB2999 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.





**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.

**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.

Respectfully, we request the committees consider ways to foster positive relationships between transient accommodation operators, communities, hotels and unions. The Amnesty Program is a good first step. But, additionally, platforms like AirBnB should be required to bring forth Good Neighbor programs. Counties should be requested to



provide for and permit a reasonable number of conforming vacation rental units and set out operator codes of conduct. Hotels should include vacation rentals in the formation of safety plans for events such as tsunamis or other alertable events while recognizing their safety plans are not executed in isolation of other members of the community.

Surely, we can all agree that a positive approach to vacation rentals will be more successful than the negative approach taken for the past number of years.

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.*

**From:** [Debra Piro](#)  
**To:** [WAM Testimony](#)  
**Subject:** OPPOSE SB 2963  
**Date:** Friday, February 2, 2018 1:54:16 PM

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*Debra Piro , R, GRI  
RB-19388  
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Visit my website:  
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e-mail: [debrapiro@gmail.com](mailto:debrapiro@gmail.com)*

**SB-2963**

Submitted on: 2/3/2018 4:02:42 PM

Testimony for WAM on 2/5/2018 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Support	No

Comments:

**SB-2963**

Submitted on: 2/4/2018 5:42:35 AM

Testimony for WAM on 2/5/2018 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Anton	Choice Capital Management, LLC	Oppose	No

Comments:

Dear Members of Senate Committees on Ways and Means and Economic Development, Tourism and Technology,

**I strongly oppose bill SB2963.** Counties are currently working on creating a regulatory framework regarding vacation rentals, a framework that is most appropriate for their specific environment. They should be allowed to finish their work. The issues brought up in favor of severely restricting vacation rental tend to be very local in nature. As such, policies need to be developed taking local situations into consideration, and this need to happen at the county level. Let me elaborate below.

The Honolulu City Council and Hawaii County Council are currently working on efforts to address many of the vacation rental issues. Honolulu City Council passed four resolutions, and the Mayor has formed a task force to evaluate the creation of new policies. The Big Island is going through their own examination of the issue as well. Each island and county has its own unique situation and requirements. Land use policies were established well before short term vacation rental existed. As such, there is a need to look at the overall benefits and impacts of this new industry, and create a solution that protects the individual rights of land owners and balances this with the needs of neighborhoods. Furthermore, the industry has matured significantly over the last few years and *professionally managed* properties are significantly less likely to create the types of concerns brought up by those that oppose short term vacation rentals. This should be taken into consideration before any blanket industry wide punitive policies are enacted.

Putting punitive and unilateral vacation rental statewide regulations in place could have a *devastating* impact on the Hawaii tourist economy. It will make Hawaii less attractive for tourism, it will further strain the shortage of accommodation that exists in certain areas on specific islands, and it will take away thousands of jobs. As research suggests, one of the most common reasons for using vacation rentals is the flexible and larger accommodations, which suggests those travelers would be less likely to travel to Hawaii if this option were not available.

As a local resident, I understand the state's need to collect taxes, and the desire to create balance in our communities. However, it seems that a few issues are used as

isolated examples to destroy an industry on which many people living in Hawaii depend in terms of work and income. The industry has become an important part of our State economy and identity. Last year it created over \$5 Billion dollars in economic activity, and supported thousands and thousands of jobs from cleaners to handyman, and property managers. Furthermore, the industry has generated significant tax revenues for the state, and this helps to fund schools, roads and services we all need to live on the islands. See for more details here: <https://goo.gl/4QeoSk>.

Each island has its own unique situations, and I strongly encourage you to allow them to develop rules and regulations to reflect the specific needs of their residents, before passing anything at the state level.

Sincerely yours,

**Anton H Steenman**  
78-7023 Aumoe Street  
Kailua-Kona, HI 96740

**SB-2963**

Submitted on: 2/2/2018 1:56:42 PM

Testimony for WAM on 2/5/2018 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Debra Piro		Oppose	No

Comments:

**SB-2963**

Submitted on: 2/2/2018 2:31:58 PM

Testimony for WAM on 2/5/2018 9:55:00 AM

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

Comments:

Dear Honorable Members of the Committee, I am writing to provide testimony in **opposition** of the majority of revisions proposed in SB2963 SD1 and its companion HB2605. 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



**SB-2963**

Submitted on: 2/2/2018 2:45:52 PM

Testimony for WAM on 2/5/2018 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Colin Lau		Oppose	No

Comments:

Aloha Senators Wakai and Dela Cruz and committee members

I respectfully oppose the measure - SB2963. There's much that's needed to be done to first have our counties to regulate the short term rental industry. I have read studies that the majority of our residents of Hawaii are supportive of the short term industry as they provide a meaningful alternative to hotel stay and the numbers support how many travelers from the mainland and from international countries chose to rent those types of facilities. Let's encourage our counties to set regulations in place allowing those owners to be able to provide such alternate accommodations but with limitations and reasonable rules. Let the counties tax such businesses if owners wish to be in the short term rental business as they do the hotel industry. Then have the State to charge/collect the transient accommodations tax and GET tax. Imposing regulations as drafted which at face value appears to violate certain rights of owners may be unenforceable. Have your committees obtained an opinion from the State AG as to the legality of the measure if your committees were to adopt the measure? If not, I request you hold the measure in committee or to postpone it until an opinion is obtained.

While not of the particular matter at hand, I and my neighbors feel our legislature should be addressing more important issues such as affordable housing, homelessness, and crime.

Mahalo for your support

Colin Lau

I write today to strongly oppose SB 2963.

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, SB2963 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.

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

**From:** [Carol A Sutherland](#)  
**To:** [WAM Testimony](#)  
**Subject:** OPPOSE SB2963  
**Date:** Saturday, February 3, 2018 9:58:08 AM

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Suggest the Counties address these issues!  
Carol

**SB-2963**

Submitted on: 2/2/2018 5:10:53 PM

Testimony for WAM on 2/5/2018 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leanne Fox		Support	No

Comments:

**SB-2963**

Submitted on: 2/2/2018 5:57:24 PM

Testimony for WAM on 2/5/2018 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Luke Sarvis		Support	No

Comments:

**SB-2963**

Submitted on: 2/2/2018 6:15:58 PM

Testimony for WAM on 2/5/2018 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ginger Gohier		Support	No

Comments:

**From:** [Karen](#)  
**To:** [WAM Testimony](#)  
**Subject:** OPPOSE SB 2963  
**Date:** Friday, February 2, 2018 2:51:38 PM

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I am opposed to SB 2963  
Let homeowners rent their property to encourage tourism in Hawaii!  
Karen Block  
3939 Kahala Ave

Sent from my iPhone



**From:** [Pamela Corbin](#)  
**To:** [WAM Testimony](#)  
**Subject:** Oppose. SB2963  
**Date:** Friday, February 2, 2018 1:58:11 PM

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Visitors don't like hotels.....especially those with children

Sent from my Verizon, Samsung Galaxy smartphone

**SB 2963 Testimony in Strong Support** submitted to the  
**Senate Committees on Ways and Means and Economic Development, Tourism and Technology**

February 5, 2018 at 9:55 pm  
Conference Room 211

Honorable Members of the Committees,

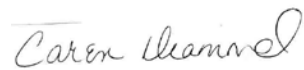
We offer this testimony in **STRONG SUPPORT** of **SB 2963**. We are both long-time residents of the Hanalei to Hā'ena, Kaua'i area. Our rural residential area has been adversely impacted for many years by illegal and so-called "legal" vacation rentals even though we are not in a Visitor Destination Area (VDA).

The largest concentration of Transient Vacation Rentals operating outside of the VDA on Kauai is on the North Shore, not only in residential zoned lands, but in the tsunami evacuation zone. The Hanalei District is home to seven (7) one-lane bridges along the coast to get to the Wainiha/Hā'ena area, and is well known for being a high hazard area yet we have the highest concentration of transient vacation rentals. This has created serious negative impacts from the unprecedented expansion of the VDA in contravention of Kauai's zoning laws. As a matter of safety for visitors and residents we hope you will give strong support to this measure.

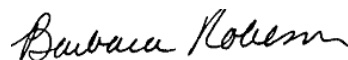
The North Shore faces vital safety issues due to the inability to safely evacuate as TVRs increased the non-resident population in tsunami inundation zones. The health, safety, and welfare of residents and visitors are impacted by the high numbers of transient units.

The improved County zoning authority in this bill will help the County to hold illegal vacation rental operators accountable. Although Kauai has had an ordinance prohibiting new vacation rentals since 2009, new ones continue to be advertised and other unpermitted operations continue unabated. We believe it is imperative to preserve local neighborhoods for residential housing needs and keep resort uses in resort areas.

We strongly urge your support to pass this essential legislation.



Caren Diamond  
PO Box 536  
Hanalei, HI 96714



Barbara Robeson  
PO Box 369  
Hanalei, HI 96714

**SB-2963**

Submitted on: 2/3/2018 9:29:18 AM

Testimony for WAM on 2/5/2018 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Shirley		Oppose	No

Comments:

Aloha Chair Dela Cruz and Members of the Senate Committee on Ways and Means,

I am a full-time resident of Hawaii Island.

I urge you to **oppose SB 2963**, and especially to throw version **SB 2963 SD1** into the trash. Legislation which proposes to make Hawaiian home owners into felons for trying to make ends meet, through sharing our homes, shows a serious lack of aloha and has no place in our state. I have a hard time believing this proposed legislation was written by a Hawaii resident.

Million dollar payouts to the counties encouraging them to quickly (and possibly recklessly) enact county-level rules will undoubtedly hurt many local Hawaii homeowners in both the long and short terms.

I strongly urge you to keep the state out of individual county efforts at managing transient accommodations. On the Big Island, where I live, I see positive results for both those residents who choose to rent out all or part of our homes as short-term rentals—including the ability to make ends meet and keep our homes—plus a huge windfall to the many local restaurants, coffee farmers, markets, tour operators, cleaners, yard care providers, transportation providers, and even the airlines.

I encourage you to enact simple legislation that allows the platforms to collect and remit the TAT and GET taxes to the state without further burdens, and rules. And I urge you to eliminate the unbelievably anti-aloha threat of turning homeowners into felons.

Mahalo,

John Shirley, Kailua-Kona

**SB-2963**

Submitted on: 2/3/2018 11:15:14 AM

Testimony for WAM on 2/5/2018 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Wayne		Support	No

Comments:

Aloha Chairs Dela Cruz and Wakai, Vice Chairs Keith-Agaran and Taniguchi, and Members of the Senate Ways and Means and Economic Development, Tourism, and Technology Committees,

Mahalo nui for the opportunity to **STRONGLY SUPPORT** the Proposed SD1 for SB2963. This bill provides us with the best chance to stem the tide of illegal vacation rentals that are impacting our neighborhoods, beaches and other public spaces, and residential housing opportunities. While I understand some local illegal vacation rental operators may claim to need the added income in order to maintain their mortgages or support their lifestyles, they provide little to no support for their claim that they could not generate sufficient revenue by offering their rental units legally, to long-term residents. There is also ample evidence to show that the proliferation of illegal vacation rentals is primarily the result of speculation and investment purchases of our limited residential inventory, by out-of-state residents and corporations with little to no concern for their substantial contribution to our skyrocketing housing costs.

Accordingly, I respectfully urge you to PASS the proposed SD1 of this bill.

Mahalo nui for your consideration of this matter.

Wayne Tanaka

**SB-2963**

Submitted on: 2/4/2018 6:49:15 AM

Testimony for WAM on 2/5/2018 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kathleen K. Raskowsky		Oppose	No

Comments:

*"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." Why have you taken disturbing language and made it worse and added a felony? This is from aloha state ...*

**SB-2963**

Submitted on: 2/4/2018 4:20:39 AM

Testimony for WAM on 2/5/2018 9:55:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
mike dixon	Mr.	Oppose	No

Comments:

This Bill is OFF MESSAGE.

Oahu is in the process of regulating STRs so stay off for now.

**From:** [Scott Atkinson](#)  
**To:** [WAM Testimony](#); [Sen. Donovan Dela Cruz](#); [Sen. Glenn Wakai](#)  
**Subject:** Oppose SB2963 -  
**Date:** Saturday, February 3, 2018 8:38:02 PM

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Dear Members of Senate Committees on Ways and Means and Economic Development, Tourism and Technology

I strongly oppose bill SB2963 because I think it is wise to let the Counties currently working on creating a regulatory framework regarding vacation rentals to be allowed to finish their work.

As a local resident, I understand the state's need to collect taxes, the frustration regarding enforcement and the need to create balance in our communities.

The Honolulu City Council and Hawaii County Council are currently working on efforts to address these issues. Honolulu City Council passed four resolutions, and the Mayor has set-up a task force in an attend to create new policies. The Big Island is going through their own examination of the issue as well.

Each island has their own specify community needs and unique situations, and I strongly encourage you to allow them to develop rules and regulations to reflect the specific needs of their residents, before passing anything.

The industry has become an important part of our State economy and identity. Last year it created \$5 Billion dollars in economic activity, and supported thousands and thousands of jobs ([http://www.hawaiitourismauthority.org/default/assets/File/JLL%20Report\\_Impact%20of%20Home%20Rental%20Market%20on%20Hawaii\\_12-29-2016.pdf](http://www.hawaiitourismauthority.org/default/assets/File/JLL%20Report_Impact%20of%20Home%20Rental%20Market%20on%20Hawaii_12-29-2016.pdf)). This money helps fund schools, roads and services we all need to live and flourish.

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

Aloha,

Scott Atkinson

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Scott Atkinson  
PO Box 283255  
Honolulu, HI 96828  
(808) 224-2679  
[srahawaii@gmail.com](mailto:srahawaii@gmail.com)

**From:** [Jill Paulin](#)  
**To:** [WAM Testimony](#); [ETT Testimony](#)  
**Subject:** Oppose SB 2963  
**Date:** Saturday, February 3, 2018 9:32:18 AM

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I oppose SB2963 and ask that you do the same. Here are my reasons:

- \$4,000,000 could be better spent for affordable housing and feeding the Homeless.
- Each county should be responsible for their issues. It is not the responsibility of the State.
- The hotel industry is thriving. Why take this much-needed type of accommodation away from travelers who will choose a different destination?
- Do you really know what the fallout will be if we stop this revenue stream? (including all that it employs?)
- Please allow the counties to address the way-overdue permitting process so desperately needed.

Thank you for your time and service,

Jill Paulin

Haleiwa, HI



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**From:** [Helen Kwak](#)  
**To:** [governor.Ige@hawaii.gov](mailto:governor.Ige@hawaii.gov); [WAM Testimony](#); [ETT Testimony](#)  
**Subject:** OPPOSE SB 2963  
**Date:** Friday, February 2, 2018 7:26:30 PM

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## OPPOSE SB 2963

Dear Legislators,

I urge you to oppose SB 2963.

As a regular visitor to Hawaii since 1989, the vacation rental option has been wonderful for me and my family. Often while traveling with small children and grandparents, there was no way for us to have a vacation if we needed to stay in regular hotel settings. The vacation rental option for us helped us to be able to enjoy the beauty of Hawaii without conforming to the style of vacation that is promoted by the travel industry. After vacationing regularly in Hawaii for many years, we decided to purchase a property in Hawaii. We are glad that we did. Recently I have become aware of the battle between the hotel industry and the vacation rental owners. It seems to be somewhat of a David and Goliath situation, with the Large Hotel Corporations on one side, and the individual homeowners who wish to rent out their extra bedrooms on the other. I would be sad to see Hawaii side with the large corporate interests over the individual entrepreneurship that is growing in the vacation rental area. There seems to be quite an unfair situation, with Bed and Breakfast permits not being issued since the 1980s, and yet increased enforcement of inspections of properties suspected of being used for individual rentals. I would encourage a vote against SP 2963! Lawmakers of Hawaii should rise up in the spirit of Aloha and think about what is better for the individuals who live in and own property in Hawaii, and not allow the large corporations and their monetary influence to run the beautiful state of Hawaii.

Sincerely

Helen Kwak

**From:** [Noni Floyd](#)  
**To:** [WAM Testimony](#)  
**Subject:** oppose 2963  
**Date:** Sunday, February 4, 2018 9:31:38 AM

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**I oppose bill 2963**  
**\$4,000,000 could be better spent for affordable housing and feeding the Homeless.**

**Each county should be responsible for their issues. It is not the responsibility of the State.**

**Thank you.**  
**Noni Floyd**  
**Kailua Resident**

Dear Members of Senate Committees on Ways and Means and Economic Development, Tourism and Technology,

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As a local resident, I understand the state's need to collect taxes, the frustration regarding enforcement and the need to create balance in our communities.

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

Aloha,

Testifiers:

Bob Rogers
Jim Kohara
Laura Adolpho
Helena Von Sydow
Donna Lecompte
Chuck
Gary Rudlaff
Michelle Ross
Anne Kirkland
Gloria
Allison Shadday
Jennifer Gonzales
Gary and Apolonia Stice
Ken Kribel
Aliene Elkins
Gayle Mackey
Mike
Jeffery Bell

Cody Comfort
Kyong Sun Fernandes
Trisha Shipman-Lameier
Francis Chan
Scott Atkinson
Andre and Susan Chabot
Rebecca Atkinson
Martin Haas
Greg