DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR

ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agarann, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Isaac W. Choy, Director
Department of Taxation

Date: March 24, 2021
Time: 10:00 A.M.
Place: Via Video Conference, State Capitol

Re: H.B. 321, H.D. 1, Proposed S.D. 1, Relating to Transient Accommodations Tax

The Department of Taxation (Department) and offers the following comments regarding H.B. 321, H.D. 1, Proposed S.D. 1, for your consideration.

H.B. 321, H.D. 1, Proposed S.D. 1, authorizes each county to levy a county surcharge (CS) on transient accommodations tax (TAT) and repeals the allocation to the counties of TAT revenue. Proposed S.D. 1 is effective upon its approval, provided that it shall be repealed on December 31, 2026, or on December 31, 2023 if no county adopts an ordinance to levy CS on TAT.

Proposed S.D. 1 authorizes each county to establish a CS on TAT at a rate no greater than 25% of all gross rental, gross rental proceeds, and fair market rental value taxable under chapter 237 (the chapter governing TAT), Hawaii Revised Statute. A county electing to establish a CS on TAT must adopt an ordinance prior to December 31, 2023. The Department is required to collect the CS beginning in the *taxable year* after the adoption of the county ordinance, but no earlier than 180 days after the establishment of the CS via the county ordinance. The Department shall not collect the CS after December 31, 2026.

The Department notes that establishing CS on TAT will require form, instruction, and substantial computer system changes. As such, the Department respectfully requests that the measure be amended to require the counties to adopt an ordinance before July 1, 2022 with the levy of the CS to begin on January 1, 2023 for all counties. This request can be accomplished by:

- Amending page 1, lines 12-13 to say, "July 1, 2022" instead of December 31, 2023;
- Amending page 3, lines 11-17 to say, "beginning on January 1, 2023; provided that no surcharge on transient accommodations tax may be levied after December 31, 2026."

- Deleting subsection (h) which starts on page 5, line 19. This subsection is not necessary as the CS on TAT would not be imposed by taxable year.

In addition, the Departments notes that subsection (c) that begins on Page 3, line 18 allows for the grandfathering of certain types of contracts. Grandfathering provisions like this are difficult to administer for the Department and will result in reduced imposition and collection of the CS on TAT. Assuming that the Department's request above is adopted, it suggests that grandfathering be limited to contracts that are entered into by January 1, 2022. The Department believe that this is a fair compromise as taxpayers will have at least 6-months to make the necessary arrangements to accommodate the new CS on TAT.

Finally, the Department suggests amending Section 8 of this measure to make the effective dates and the amendments suggested above consistent.

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

HAWAI'I TOURISM AUTHORITY

Hawai'i Convention Center
1801 Kalākaua Avenue, Honolulu, Hawai'i 96815
kelepona tel 808 973 2255
kelepa'i fax 808 973 2253
kahua pa'a web hawaiitourismauthority.org

David Y. Ige
Governor

John De Fries
President and Chief Executive Officer

Statement of
JOHN DE FRIES

Hawai'i Tourism Authority
before the
SENATE COMMITTEE ON WAYS AND MEANS

Wednesday, March 24, 2021
10:00 AM
State Capitol, Conference Room #211
via videoconference

In consideration of
HOUSE BILL NO. 321 HD1, SD1 PROPOSED
RELATING TO TRANSIENT ACCOMMODATIONS TAX

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Senate Committee on Ways and Means: the Hawai'i Tourism Authority (HTA) is **offering comments** on House Bill 321 HD1, SD1 Proposed, which repeals the distribution of Transit Accommodations Tax (TAT) revenues to the counties. It authorizes each county to impose a surcharge on the TAT.

We appreciate that, based on this draft, that HTA's Tourism Special Fund will continue to have $79 million allocated, and that the Convention Center Enterprise Special Fund will continue to have $16.5 million allocated, which match the pre-pandemic levels of funding.

HTA has a significant task ahead in driving the economic recovery from the COVID-19 pandemic through the rebuilding of the tourism industry. HTA helped to generate $2.07 billion in state tax revenues in 2019. HTA's 2019 expenditure of funds resulted in an approximately $26-to-$1 return on investment. Every dollar allocated to HTA and the Hawai'i Convention Center (HCC) is critical to successfully carry out our mission and to strategically market Hawai'i as the preferred tourism destination. This is all in an effort to help our state recover from the economic downturn, to get our residents back to work and to return the state's financial well-being to a sustainable level.

HTA last received TAT funds in April 2020, and we have significantly cut our budget as a result. In fiscal year 2020, HTA's operating budget was $86.7 million and due to the effects of the COVID-19 pandemic, HTA's operating budget was reduced to $40.9 million in fiscal year 2021. This equates to a nearly 53% decrease. In addition, HTA implemented a hiring freeze, ahead of the governor's official directive, and we now have six vacant positions, which amounts to a 19% vacancy rate.

The return on investment on our efforts, in partnership with industry, is tied to the ability to be nimble and flexible in our budget and activities through a sufficiently funded budget. The current pandemic is an example of the need to have this flexibility to launch effective and appropriate strategies in the right markets and at the right level. The time for us to heavily invest into our source markets is rapidly approaching and it is important to be armed with the capital for those efforts. We must also ensure that we continue to support and elevate all four pillars of our strategic plan which include natural resources, Hawaiian culture, community, and branding. Funding to support all four pillars is crucial to ensuring a balanced recovery that addresses many of the challenges faced by tourism pre-pandemic.

Furthermore, the Meetings, Conventions and Incentives (MCI) market is an important component of marketing Hawaiʻi. In 2019, the MCI market spent $904.7 million in Hawaiʻi. HCC is in the process of executing contracts that could bring thousands of people and millions of dollars to Hawaiʻi, and additionally provide much needed job security for Hawaiʻi's residents. The HCC will play an important role in supporting global events, such as the Asia-Pacific Economic Cooperation (APEC), should Hawaii be selected as a venue. Therefore, it's important to have the ability to continue these efforts to engage with potential clients and to lay the foundation for the future of Hawaiʻi's economy.

We appreciate this opportunity to provide comments on HB321 HD1 Proposed SD1.

DAVID Y. IGE
GOVERNOR

CRAIG K. HIRAI
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAI'I EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAIʻI
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAIʻI 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

LATE

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
HOUSE BILL NO. 321, H.D. 1, PROPOSED S.D. 1

March 24, 2021
10:00 a.m.
Room 211 and Videoconference

RELATING TO TRANSIENT ACCOMMODATIONS TAX

The Department of Budget and Finance (B&F) offers comments on House Bill (H.B.) No. 321, H.D. 1, Proposed S.D. 1.

This proposed draft repeals the distribution of Transient Accommodations Tax (TAT) revenues to the counties and authorizes each county to impose a surcharge on the TAT.

B&F is concerned that this measure would decrease revenues to the State general fund and impact the State's share of direct federal aid from the American Rescue Plan Act of 2021 (ARPA). Provisions of the ARPA specifically state:

> *"A state or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such state or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase."*

It should be pointed out that this ARPA prohibition could be interpreted to mean that the State cannot restart the TAT waterfall to fund the Convention Center and Hawaiʻi Tourism Authority (HTA) in FY 22 and FY 23 even if funding for the counties is eliminated. The TAT waterfall was suspended through emergency proclamation in the fourth quarter of FY 20 and for all of FY 21. Restarting the TAT waterfall in FY 22 would result in a general fund loss of $203 million (for all TAT allocations) and $85.5 million (for the Convention Center and HTA only).

B&F notes that any reduction in State tax revenues could result in reduced ARPA funding. Hawaiʻi's estimated allocation of ARPA funds is in excess of $1.6 billion and is critical to mitigating the negative financial impacts the COVID-19 pandemic has had on the State budget.

B&F defers to the Department of Taxation regarding the implementation of this bill.

Thank you for your consideration of our comments.

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
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RICK BLANGIARDI
MAYOR

ANDREW T. KAWANO
DIRECTOR

KELLI J. NISHIMURA
ACTING DEPUTY DIRECTOR

WRITTEN ONLY
TESTIMONY BY ANDREW T. KAWANO
DIRECTOR, DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
HOUSE BILL NO. 321, H.D. 1
March 24, 2021
10:00 a.m.
Room CR-11 and Videoconference

RELATING TO TRANSIENT ACCOMMODATIONS TAX

Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members of the Committee:

The Department of Budget and Fiscal Services is opposed to House Bill 321, H.D.1, which proposes to repeal the allocations of transient accommodations tax (TAT) revenues to the counties.

The original intent of the TAT was to help the counties fund visitor-related expenses, including police and fire protection, lifeguard services, maintenance and debt service for parks, beaches, roads, sewage systems and other tourism related infrastructure. Other than the TAT, the counties do not receive significant revenues from visitors, unlike the State, which receives general excise tax (GET) and TAT revenues. Without the TAT, residents will end up covering visitor-related expenses, either by increases in taxes or fees, or by decreases in services.

Standing Committee Report number 116 of the Committee on Labor and Tourism stated that the significant decrease in visitors to Hawaii as a result of the COVID-19 pandemic and related mitigation measures has resulted in an extreme loss in revenues from the State's collection of TAT. This loss in revenues was the reason for the adjustment to TAT allocations. Thus, the bill proposes a permanent change to address a temporary loss of revenues. When tourism recovers, the TAT revenues will increase and the counties will continue to incur tourism-related costs, but will receive no revenues to offset these costs.

Also, the loss of TAT revenues due to the COVID-19 pandemic seems to be eligible for revenue replacement from the American Rescue Plan Act (ARPA). This would address the temporary loss of TAT revenues, and remove the need to adjust TAT allocations to the counties. We respectfully request that the counties receive their allocation of TAT if the State receives revenue replacement of TAT from the American Rescue Plan Act.

Thank you for the opportunity to testify on H.B. 321, H.D.1. Should you have any questions, please contact me at 768-3901.

Michael P. Victorino
Mayor

Sananda K. Baz
Managing Director

OFFICE OF THE MAYOR
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

LATE

March 23, 2021

TESTIMONY OF MICHAEL P. VICTORINO
MAUI COUNTY MAYOR

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS
Wednesday, March 24, 2021, 10:00 a.m.
Conference Room 211

HB321 HD1 PROPOSED SD1 RELATING TO TRANSIENT ACCOMODATIONS TAX
Honorable Donovan M. Dela Cruz, Chair
Honorable Gilbert S.C. Keith-Agaran, Vice Chair
Honorable members of the Committee on Ways and Means

Thank you for the opportunity to testify in **OPPOSITION** to **HB321 PROPOSED SD1**.

This bill repeals the allocation of excess transient accommodations tax revenues to the Turtle Bay conservation easement special fund, for development and implementation of initiatives to take advantage of expanded visa programs and increased travel opportunities for international visitors to Hawaii, for the operation of a Hawaiian center and the museum of Hawaiian music and dance, to the tourism special fund for a safety and security budget, to the counties, and to the special land and development fund. Makes the allocations to the convention center enterprise special fund and tourism special fund unspecified amounts.

Additionally, the proposed measure will allow for Counties to establish and collect surcharge on TAT. Our current taxes and fees already make us one of the highest visitor tax rates in the nation.

The original purpose of the TAT was to help the counties fund visitor-related expenses based on a percentage of earned revenue. While recognizing the devastating impacts the pandemic has had on our State overall, I humbly request continued support of TAT funding to help Maui County with the associated costs in providing public services to residents and visitors, without adding a surcharge to the existing TAT.

Since the State and the counties serve the same constituents, it is important that we continue to work as partners in meeting the needs of our communities. As demand for services is ever increasing (and so is the cost of those services), it is equally important that revenue be appropriately shared so that the needs of our residents and visitors can be met to the best of our combined abilities.

Thank you for allowing me to testify in **OPPOSITION** to **HB321 HD1, PROPOSED SD1.**

LATE

Testimony of the
Hawaii State Association of Counties
On
H.B. No. 321, H.D.1, S.D. 1 Proposal
Relating to Relating to Transient Accommodations Tax
Committee on Ways and Means
Wednesday, Mach 24, 2021, 10:00 a.m.
Room 211

The Hawaii State Association of Counties (HSAC) opposes H.B. No. 321, H.D.1, Proposed S.D.1, which includes among the changes being proposed:

- The repeal of the allocations of transient accommodations tax revenues to the counties;
- Authorizing a county to establish a surcharge on TAT by ordinance after public hearing and giving notice to Tax Director, who shall levy, assess and collect the tax;
- The rate of the surcharge shall be not greater than 25% of all gross rental, gross rental proceeds, and taxable fair market rental value;
- The surcharge may be levied beginning the taxable year after adoption of the ordinance;
- The surcharge shall be assigned to the tax district in which the accommodations unit is located;
- The Tax Director shall deduct 1% of the gross proceeds of the county surcharge to reimburse the State for the costs of assessment, collection, and disposition…; pay the remaining balance on a quarterly basis to the county…
- Repeals the requirement that when a county's contribution into the EUTF is less than the annual contribution required, the contributions shall be deposited into the fund from the TAT revenues collected by the county; and
- Repeals the TAT allocation to the counties.

<u>Background</u>

In 1990, the Legislature enacted Act 185 to clarify that the legislative intent in distributing the TAT revenues was to provide a more equitable method of sharing state revenues with the counties, in lieu of grants-in-aid. The Legislature noted that "…many of the burdens imposed by tourism fall on the counties." The Legislature noted that increased pressures of the visitor industry meant greater demands on ***county services, such as "…providing, maintaining, and upgrading police and fire protection, parks, beaches, water, roads, sewage systems, and other tourism related infrastructure***" (House Journal 1990; Conference Committee Report No. 207). At that time, the TAT rate was five percent.

The Economic Revitalization Task Force (ERTF), which included key leaders in the private sector, was established to address the slow growth in the State's economy, job losses, and falling government revenues. From 1990 to 1996, the annual growth rate of real gross state product had slowed to an average of 0.5 percent, and Hawaii loss jobs in five out of seven years. Hawaii's promotional programs appeared not to have kept pace with the changing profile of the traveler, and Hawaii loss market share to other destinations.

As a result, the visitor industry agreed to an increase in the TAT rate in exchange for a commitment to improve funding and administration of the State's visitor industry marketing and promotional efforts. This resulted in the establishment of the Hawaii Tourism Authority.

The TAT rate was increased on:

- January 1, 1994 to 6 percent;
- January 1, 1999 to 7.25 percent;
- January 1, 2009 to 8.25 percent, and
- January 1, 2010 to 9.25 percent.

Since that time, more allocations of TAT revenues were made to: Turtle Bay conservation easement; Hawaiian Center and Museum of Hawaiian Music and Dance; sub-account for safety and security; tourism emergency special fund; special land and development fund for natural resources production and preservation.

Act 156, Session Laws of Hawaii 1998, established the TAT rate at 6 percent, and the revenues were allocated as follows:

- 17.3 percent ($23,620,257 in 1999) deposited into the convention center capital special fund;
- 37.9 percent ($51,746,111 in 1999) deposited into the tourism special fund; and
- 44.8 percent ($61,166,907 in 1999) collected and transferred to the counties: 14.5% to Kauai County; 18.6% to Hawaii County; 44.1% to City and County of Honolulu; and 22.8% to Maui County.

The TAT rate has been raised incrementally and is now at 9.25 percent. The moneys collected at the original 6 percent rate now represents 64.8 percent of total TAT revenues.

The TAT distribution to the counties have gone from:

- $78,363,600 in 1990 when the TAT rate was 5% to;
- $56,932,288 when the TAT rate was increased to 7.25% and monies also deposited into the Tourism Special Fund and the Convention Center Special Fund to;
- $502,930,626 when the rate was increased to 9.25% and monies deposited to the General Fund ($50,756,607), and into the Tourism Special Fund, and the Convention Center Special Fund;
- $93,000,000 when changed from a percentage allocation, with $171,555,996 deposited into the General fund, $71,000,000 deposited into

the Tourism Special Fund, and $33,000,000 deposited into the Convention Center Special Fund

HSAC Requested Amendments

1. Delete PART I.

2. Raise the TAT rate to 11.56 percent from 9.25 per cent beginning on January 1, 2022 to December 31, 2026, by amending:

- Section 237D-2(a) to read:

"(a) There is levied and shall be assessed and collected each month a tax of:

(1) Five per cent for the period beginning on January 1, 1987, to June 30, 1994;
(2) Six per cent for the period beginning on July 1, 1994, to December 31, 1998;
(3) 7.25 per cent for the period beginning on January 1, 1999, to June 30, 2009;
(4) 8.25 per cent for the period beginning on July 1, 2009, to June 30, 2010; and
(5) 9.25 per cent for the period beginning on July 1, 2010[~~, and thereafter;~~], to December 31, 2021; and
(6) 11.56 per cent for the period beginning on January 1, 2022, to December 31, 2026

on the gross rental or gross rental proceeds derived from furnishing transient accommodations."

- Section 237D-2(c) to read:

"(c) There is levied and shall be assessed and collected each month, on the occupant of a resort time share vacation unit, a transient accommodations tax of:

(1) 7.25 per cent on the fair market rental value until December 31, 2015;
(2) 8.25 per cent on the fair market rental value for the period beginning on January 1, 2016, to December 31, 2016; and
(3) 9.25 per cent on the fair market rental value for the period beginning on January 1, 2017[~~, and thereafter.~~]; and
(4) 11.56 per cent for the period beginning on January 2, 2022 to December 31, 2026."

2. Change the allocation of TAT revenues to the counties by amending section 237D-6.5(b)(4) to read:

(4) [~~$103,000,000~~] 44.8 per cent shall be allocated as follows: Kauai county shall receive 14.5 per cent, Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent; [~~provided that commencing with fiscal year 2018-~~

~~2019, a sum that represents the difference between a county public employer's annual required contribution for the separate trust fund established under section 87A-42 and the amount of the county public employer's contributions into that trust fund shall be retained by the state director of finance and deposited to the credit of the county public employer's annual required contribution into that trust fund in each fiscal year, as provided in section 87A-42, if the respective county fails to remit the total amount of the county's required annual contributions, as required under section 87A-43;~~] and

Thank you for the opportunity to testify on H.B. 321,HD1, PROPOSED SD1, and considering the recommended change.

Kohala Coast
RESORT ASSOCIATION

March 22, 2021

Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Agaran, Vice Chair
Senate Ways and Means Committee
Hawaii State Legislature

Opposition to HB321 HD1 SD1

Dear Senator Dela Cruz, Senator Keith-Agaran, and Members of the Ways and Means Committee,

Thank you for the opportunity to provide testimony on HB321 HD1 SD1.

While we understand that the State Legislature is looking to address substantial budget shortfalls and address a wide variety of earmarks of the Transient Accommodations Taxes (TAT) with this bill, the Kohala Coast Resort Association (KCRA) has serious concerns about removing the TAT allocation provided to the counties and **opposes** this measure.

Since the cap on the amount of the allocation to the counties was instituted in 2012, we have seen the number of direct air seats to Hawaii Island more than double. We believe that the counties should therefore receive an adequate percentage of the TAT currently collected by the state, to be able to address that growth. Unfortunately, all of the growth in the visitor industry during the last ten years has benefitted the state, not the counties, as the initial legislation intended. In 2009, the percentage of TAT remaining in the general fund after all other allocations was 3.7% of overall collections, or $7,793,000. **In 2019, the percentage of TAT remaining in the general fund was 59.1% or $376,975,000!**

We also **oppose** allowing the counties to create an additional TAT surcharge on the visitor industry. With TAT, GET and fees on everything from rental cars, to airfares, to state parks – we already have one of the highest visitor tax rates in the nation. We encourage greater cooperation between state and county lawmakers on how to meet growing needs throughout Hawaii. We’ve learned all too well during the last year, the perils that ensue when government becomes too dependent on one industry to support our services and infrastructure! Hopefully, lessons learned during this difficult time will provide the framework for greater cooperation, so that our visitor industry, which economists predict will take years to recover, is not shouldering an oversized burden.

KCRA is a collection of master-planned resorts and hotels, situated north of the Ellison Onizuka Kona International Airport at Keahole which represents more than 3,500 hotel and timeshare accommodations and an equal number of resort residential units. This is approximately 35 percent of the visitor accommodations available on the Island of Hawai`i. KCRA member properties annually pay more than $25 million in TAT, $25 million in GET and $11 million in property taxes. KCRA members employ more than 5,000 Hawaii Island residents.

Sincerely,

Stephanie P. Donoho

Stephanie Donoho, Administrative Director

PO Box 6991, Kamuela, HI 96743 * (808) 747-5762 * kohalacoastresortassn@gmail.com * www.kohalacoastresorts.com

Kona-Kohala
CHAMBER OF COMMERCE

March 23, 2021

RE: HB 321 HD1 Proposed SD1 RELATING TO TRANSIENT ACCOMMODATIONS TAX

Dear Chair Dela Cruz and the Senate Committee on Ways and Means,

The Kona-Kohala Chamber of Commerce **opposes** HB 321 HD1 Proposed SD1 that repeals the distribution of transient accommodations tax revenues to the counties and authorizes each county to impose a surcharge on transient accommodations tax.

With nearly 500 members, our chamber represents the business community in the Kona and Kohala districts on the West side of Hawai‘i Island where tourism drives the local economy. Certainly, our region was hard-hit from COVID-19 impacts as was the entire state. We understand that transient accommodation tax revenues were altered by this unprecedented past year and the legislature is seeking solutions in this regard.

However, we are very concerned with this newest version of HB 321 that describes the establishment of a county surcharge on transient accommodations tax. We believe this is not the time to create more change and uncertainty. The steps in this process that include conducting a public hearing, adopting a county ordinance, adhering to strict timelines and altering bureaucracy to accommodate these changes at the state and county levels are counterproductive in solving this issue at this time.

The Kona-Kohala Chamber of Commerce exists to provide leadership and advocacy for a successful business environment in West Hawai‘i. We work to strengthen our local economy and promote the well-being of our community. We ask that you stop moving forward with HB 321 as proposed. **This is a complex issue that requires more consideration.**

Sincerely,

Wendy J. Laros

Wendy J. Laros, President and CEO
Kona-Kohala Chamber of Commerce

Kona-Kohala Chamber of Commerce
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GRASSROOT
INSTITUTE OF HAWAII

March 24, 2021
10:00 a.m.
VIA VIDEOCONFERENCE
Conference Room 211

To: House Committee on Consumer Protection & Commerce
Rep. Aaron Ling Johanson, Chair
Rep. Lisa Kitagawa, Vice Chair

From: Grassroot Institute of Hawaii
Joe Kent, Executive Vice President

RE: HB321 Proposed SD1 — RELATING TO TRANSIENT ACCOMMODATIONS TAX

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on the proposed SD1 for HB321, a "gut and replace" amendment that would authorize each county to impose a surcharge on the transient accommodations tax.

In addition to our objections concerning utilizing the mechanism of gut and replace for any legislation, especially a tax bill, we are gravely concerned about the impact of this tax hike and the many fees, tax increases and surcharges that have been proposed during this legislative session. Hawaii residents are already among the most taxed in the country; the state has the second highest overall tax burden in the U.S.

That high tax burden contributes to Hawaii's cost of living, and is one of the reasons why so many Hawaii residents have been leaving in search of greater opportunities elsewhere.

Given the state's already-high tax burden, there is never a good time to raise taxes. But this proposal comes at an especially bad time. Hawaii is still in a state of emergency, tourism has slowed to a trickle, businesses are closing and unemployment is high. The economy will take years to recover from the pandemic and lockdowns. The last thing Hawaii residents and businesses need at this point is a tax hike.

There are myriad reasons policy makers should be wary of implementing tax hikes at this time. Here are just a few:

>> Hawaii cannot sustain a hike in taxes since its already-damaged economy was hit harder by the lockdowns than any other state in the nation.[1]

>> State lawmakers increased taxes and fees substantially following the Great Recession of 2007-2008,[2] despite a windfall in revenues from an economic boom over the past decade. Taxes and fees ballooned on motor vehicles, transient accommodations, estates, fuel, food, wealthy incomes, property, parking and businesses.

>> Hawaii's population reduction of 21,879 people since fiscal 2016[3] has left Hawaii's remaining taxpayers with a greater tax burden.

>> Hawaii businesses will be experiencing an average 38% increase in their state unemployment tax in 2021.[4] The UI tax rate depends not only on individual employer's claims experiences but also on the overall health of the state's unemployment insurance fund, which is hundreds of millions of dollars in the red.[5]

>> Hawaii has a regressive general excise tax that disproportionately hits the poor.[6]

>> Hawaii has a progressive income tax that taxes high-income earners at 11%, second only to California at 13.3%.[7] Hawaii's top 1% already pays 23% of all income taxes in the state.[8]

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[1] Dave Segal, "Hawaii's unemployment rate hit nation-high 15% in September," Honolulu Star-Advertiser, Oct. 20, 2020.

[2] "Tax Acts (by Year)," Tax Foundation of Hawaii, accessed Feb. 8, 2021. See also, John S. Kiernan, "2021's States with the Best & Worst Tax ROI," WalletHub, March 23, 2021.

[3] "Annual Estimates of the Resident Population for the United States, Regions, States, and the District of Columbia: April 1, 2010 to July 1, 2020 (NST-EST2020)" U.S. Census Bureau, Population Division, December 2020.

[4] Grassroot Institute UI contribution analysis" Grassroot Institute of Hawaii, Nov. 13, 2020, sheet 2.

[5] "UI Budget," United States Department of Labor, Employment & Training Administration, Feb. 8, 2021.

[6] "Rich States, Poor States: ALEC-Laffer State Economic Competitiveness Index: "Sales Tax Burden," American Legislative Exchange Council, 2021. Note that Hawaii does not have a sales tax, but a state general excise tax that is levied on almost all goods and services, and imposed multiple times throughout the production chain.

[7] Katherine Loughead, "State Individual Income Tax Rates and Brackets for 2020," Tax Foundation, Feb. 4, 2020.

[8] "Hawaii Individual Income Tax Statistics," Hawaii Department of Taxation, December 2020, Table 13A.

>> Closing tax exemptions would amount to tax hikes for Hawaii businesses already facing a steep spike in their unemployment insurance taxes.

Hawaii needs leadership that will stabilize the current financial crisis, reduce unsustainable long-term costs and lower the cost of living. Balancing the books without tax increases or future debt could send a message that Hawaii is a good place for businesses and future generations, and this could help the economy thrive while motivating people to return to the islands.

If the state needs more revenues, policymakers should focus on growing the economy. In our current condition, even small economic gains would have big effects.

Hawaii's residents and businesses need a break from new taxes, fees, surcharges and tax hikes. This is not the time to make Hawaii a more expensive place to live and do business.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii

HAWAI'I LODGING & TOURISM ASSOCIATION

LATE

Testimony of
Mufi Hannemann
President & CEO
Hawaiʻi Lodging & Tourism Association

Senate Committee on Ways & Means
House Bill 321, House Draft 1: Relating to Transient Accommodations Tax

Chair Dela Cruz and members of the Committee, mahalo for the opportunity to submit testimony on behalf of the Hawaiʻi Lodging & Tourism Association, the state's largest private sector visitor industry organization.

The Hawaiʻi Lodging & Tourism Association—nearly 700 members strong, representing more than 50,000 hotel rooms and nearly 40,000 lodging workers —opposes this measure that would strip the longstanding TAT allocations to each of the counties and would further allow each county to establish its own surcharge on the TAT.

Hawaiʻi's Transient Accommodations Tax was always intended to support the counties among its other uses like destination marketing and funding the Hawaiʻi Convention Center. As it is, each of our state's four counties bears a significant responsibility and financial burden in providing various services that are utilized and impacted by tourists and tourism. These include law enforcement and public safety, emergency medical services, water supply and sewage treatment, road maintenance, park repairs and beach safety, refuse collection, and public transportation, among others. The monies that are allocated to the counties each year are intended to offset these costs and should not be removed.

Moreover, HB321, HD1 as it is currently written would create disparity between the counties and would ultimately raise the cost of doing business in our state. By taking away the $103 million allocated to the counties, the Legislature would force counties to adopt the additional tax which would be compounded on an already high 10.25% TAT rate which was just raised in 2017 and recently added to all resort fees. Additionally, the measure would add a layer of confusion between the various counties as the proposed TAT surcharge could vary from one island to another.

Our organization, which represents a variety of businesses in and around the tourism industry, feels strongly that now is not the time to place additional cost burdens on local businesses. Everybody is desperately working to recover an economy that has been disproportionately affected by the COVID-19 pandemic, and we should be looking to support these businesses rather than saddling them with additional costs.

As such, HLTA opposes House Bill 321, House Draft 1.

Mahalo for the opportunity to provide this testimony.

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Fairmont
ORCHID

March 22, 2021

LATE

Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Agaran, Vice Chair
Senate Ways and Means Committee
Hawaii State Legislature

RE: Opposition to HB321 HD1 SD1

Aloha Senator Dela Cruz, Senator Keith-Agaran and Members of the Ways & Means Committee,

On behalf of Fairmont Orchid, a resort located in Hawaii Island, we appreciate this opportunity to provide comments on HB321 HD1 SD1.

This pandemic has cast a grim financial reality upon the state of Hawaii and we understand your need to address substantial budget shortfalls. While the earmarked funds generated from the Transient Accommodations Tax (TAT) has been called into question, we would like to express concerns about removing the TAT allocation provided to counties, as it may further hinder the economic recovery of the hospitality industry.

Counties must receive a fair share of TAT funds collected by the state to keep pace with growth in the tourism industry. While a cap on the amount of allocation to counties was instituted in 2012, visitor growth has increased exponentially since then. If a more equitable distribution of funds was created, it would help counties address the impact of visitors to the island.

Counties should not be allowed to create an additional TAT surcharge on the visitor industry, as it may deter travelers from visiting Hawaii. The state of Hawaii is currently ranked *third in the nation* in terms of state rates of lodging taxes, when you take TAT and GET taxes into consideration. If we allow an additional county surcharge, we run the risk of having the *highest* lodging tax rates in the country. As economists predict it could take years for our visitor industry to fully recover, we should not create an additional financial burden for visitors during a time when we should instead focus on building momentum for the hospitality industry.

As we are not expecting a full economic recovery for years, we respectfully oppose HB321 HD1 SD1, as we are in favor of counties receiving an adequate percentage of TAT funds collected by the state of Hawaii.

Sincerely,

Charles Head
General Manager

TAX FOUNDATION OF HAWAII
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LATE

SUBJECT: TRANSIENT ACCOMMODATIONS, County Surcharge on TAT

BILL NUMBER: HB 321, SD1 Proposed

INTRODUCED BY: Senate Committee on Ways and Means

EXECUTIVE SUMMARY: Repeals the distribution of transit accommodations tax revenues to the counties. Authorizes each county to impose a surcharge on transient accommodations tax.

SYNOPSIS: Adds a new section to chapter 46, HRS, to authorize counties to adopt a surcharge on TAT:

Adds a new section to chapter 237D, HRS, providing for the surcharge, and limiting the surcharge to 25% of taxable gross rental, gross rental proceeds, and fair market rental value. States that all provisions of the TAT law apply to the surcharge.

Adds a new section to chapter 248, HRS, to provide for a "skim" of 1% of the gross collections of TAT surcharge that will be retained as State general fund realizations.

Amends section 87A-42, HRS, to delete the language mandating sequestration of the county's share of TAT moneys if the county has not made its required contributions toward Other Post-Employment Benefits for public workers such as pensions (ERS) and health benefits (EUTF).

Amends section 237D-6.5, HRS, to delete the current provision earmarking $103 million annually to the counties.

Makes other technical and conforming amendments.

EFFECTIVE DATE: Upon approval; repeals on 12/31/2026.

STAFF COMMENTS: In law prior to 2009, the TAT was levied at the rate of 7.25% on most transient accommodations. Once collected, 44.8% of the tax, after satisfying specified earmarks, was distributed to the counties. Act 61, SLH 2009, increased the TAT rate to 8.25% between 7/1/09 and 6/30/10 and to 9.25% between 7/1/10 to 6/30/15. Act 161, SLH 2013, made permanent the TAT rate of 9.25% and changed the allocations of TAT from a percentage basis to a specific dollar amount.

After the counties complained about their allocations, Act 174, SLH 2014, required a state-county functions working group to be convened to evaluate the division of duties and responsibilities between the State and counties relating to the provision of public services and to recommend an appropriate allocation of the transient accommodations tax revenues between the State and counties that properly reflects the division of duties and responsibilities relating to the provision of public services. The working group met and issued a report to the 2015 legislature, recommending that the percentage allocation of the TAT be restored. Bills were drafted to adopt that recommendation. The bills did not pass. After some years of going back and forth, Gov. Ige in 2019 announced that his administration would submit a bill to restore some form of percentage allocation to the counties. That bill, BUF-21 (19), failed to pass.

The current bill presents one way to end the bickering. "Stop complaining about the amount allocated to you from the TAT," the bill's proponents seem to be saying, "because we'll give you the authority to impose TAT on your own."

We have concerns about the 10% penalty on the gross tax due for failure to file the apportionment schedule or to correctly apportion the tax to the counties. We realize that the penalty is modeled after the one that already exists in HRS section 237-8.6 relating to the county surcharge on state tax, but we think that the amount of the penalty imposed by either law can be grossly excessive and is not in proportion to the harm suffered by the government. We prefer a rule that would allow a county who has been aggrieved to recover a penalty that would be a percentage of the amount of deficiency from the county's perspective. For example, if a taxpayer earns $100,000 in taxable gross rentals and fails to file the schedule, and the gross rentals are located on Maui where Maui has, we assume, adopted a 1% surcharge, then the penalty would be a percentage of the $1,000 deficiency that Maui has suffered, instead of $10,000 which, under the bill, would all go to the State.

We also have concerns about proposed section 237D-___(h), which would require a fiscal year taxpayer to file short period returns in the year the surcharge becomes effective. In previous TAT rate changes, the Department of Taxation was able to come up with a form that accommodated periods before and after the rate change. Thus, we don't believe that such a provision is necessary at this time.

Digested 3/23/2021

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TESTIMONY BY ANDREW T. KAWANO
DIRECTOR, DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
HOUSE BILL NO. 321, H.D. 1, proposed S.D.1
March 24, 2021
10:00 a.m.
Room CR-11 and Videoconference

RELATING TO TRANSIENT ACCOMMODATIONS TAX

Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members of the Committee:

The Department of Budget and Fiscal Services is opposed to House Bill 321, H.D.1, proposed S.D.1, which proposes to repeal the allocations of transient accommodations tax (TAT) revenues to the counties and authorize each county to establish a surcharge on transient accommodations tax by ordinance.

The original intent of the TAT was to help the counties fund visitor-related expenses, including police and fire protection, lifeguard services, maintenance and debt service for parks, beaches, roads, sewage systems and other tourism related infrastructure. Other than the TAT, the counties do not receive significant revenues from visitors, unlike the State, which receives general excise tax (GET) and TAT revenues. Without the TAT, residents will end up covering visitor-related expenses, through increases in taxes or fees, and/or decreases in services.

H.B. 321, H.D.1, proposed S.D.1 provides for repeal of the Act by December 31, 2023 if none of the counties of the State adopt an ordinance to levy a county surcharge on TAT by that date. If an ordinance to levy a county surcharge on TAT is adopted by December 31, 2023, the Act shall be repealed on December 31, 2026. These provisions make the loss of the counties' allocations temporary, which is an improvement over H.B. 321, H.D.1. We have concerns about adding a county surcharge on TAT during a period in which the county is supporting and encouraging economic recovery in the tourism sector. Increasing costs upon tourists visiting our islands may deter many from coming and therefore delay putting our constituents back to work. As a result, should the City not elect to levy the surcharge, the bill would result in the continued loss of TAT revenues to the City, with no offsetting replacement of revenues.

The loss of TAT revenues due to the COVID-19 pandemic seems to be eligible for revenue replacement from the American Rescue Plan Act (ARPA) for the State. Should the State draw on ARPA funds for that purpose it could address the temporary loss of TAT revenues, and remove the need to adjust TAT allocations to the counties. We respectfully request that the counties receive their allocation of TAT, especially if the State receives revenue replacement of TAT from the American Rescue Plan Act.

Thank you for the opportunity to testify on H.B. 321, H.D.1, proposed S.D.1. Should you have any questions, please contact me at 768-3901.