HAWAI'I TOURISM AUTHORITY

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David Y. Ige
Governor

Ronald Williams
Chief Executive Officer

Testimony of
Ronald Williams
President and Chief Executive Officer
Hawai'i Tourism Authority
on
H.C.R. No. 48
Requesting the Auditor to Conduct an Analysis of the Need for the Licensing and Regulation of Transient Vacation Rentals
House Committee on Tourism
Wednesday, March 4, 2015
10:35 a.m.
Conference Room 312

The Hawaii Tourism Authority supports H.C.R. No. 48, which requests the Legislative Auditor to conduct an analysis of the need to regulate transient vacation rentals.

Section 26H-6, HRS requires that new regulatory measures, such as H.B. 825, which proposes to license and regulate transient vacation rentals, be referred to the Legislative Auditor for analysis.

The recently concluded study by SMS Research, which identified over 22,000 individually advertised vacation rental units in Hawaii, and the series of articles in the Star-Advertiser are evidence that there is a need for the establishment of a clear and enforceable mechanism for the regulation of transient vacation rentals.

For these reasons, we support H.C.R. 48.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
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PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

TO THE HOUSE COMMITTEE ON TOURISM

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015
Wednesday, March 4, 2015
10:35 a.m.

TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 48 AND HOUSE RESOLUTION NO. 22, REQUESTING THE AUDITOR TO CONDUCT AN ANALYSIS OF THE NEED FOR THE LICENSING AND REGULATION OF TRANSIENT VACATION RENTALS.

TO THE HONORABLE TOM BROWER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Catherine Awakuni Colón, Director of the Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to provide comments on House Concurrent Resolution No. 48 and House Resolution No. 22.

The resolutions request, amongst other provisions, that the State Auditor perform a sunrise analysis pursuant to Section 26H-6, Hawaii Revised Statutes ("HRS"), on the regulatory scheme of transient vacation rentals, as proposed by House Bill No. 825 (2015) and Senate Bill No. 1237 (2015). The Auditor's analysis would set forth the

probable effects of the proposed regulatory measure, assess whether its enactment is consistent with the purposes of HRS § 26H-2, and assess alternate forms of regulation. Therefore, the Department agrees that the Auditor is to conduct a sunrise review of transient vacation rentals before that industry is to be regulated.

Thank you for the opportunity to submit comments on House Concurrent Resolution No. 48 and House Resolution No. 22. I will be happy to answer any questions the members of the Committee may have.

Hawai'i Association of REALTORS®
www.hawaiirealtors.com

808-733-7060
808-737-4977

1259 A'ala Street, Suite 300
Honolulu, HI 96817

March 4, 2015

The Honorable Tom Brower, Chair
House Committee on Tourism
State Capitol, Room 312
Honolulu, Hawaii 96813

RE: H.C.R. 48 / H.R. 22, REQUESTING THE AUDITOR TO CONDUCT AN ANALYSIS OF THE NEED FOR THE LICENSING AND REGULATION OF TRANSIENT VACATION RENTALS.

HEARING: Wednesday, March 4, 2015 at 10:35 a.m.

Aloha Chair Brower, Vice-Chair Ohno, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR **supports** H.C.R. 48 and H.R. 22, which requests the Auditor to conduct an analysis of the need for the licensing and regulation of transient vacation rentals.

HAR supports a sunrise audit pursuant to HRS 26H-6 which is required prior to the regulation of any previously unregulated profession or vocation. Kauai and Maui have their own transient vacation rental regulatory regimes. They permit, through county ordinances, to manage and regulate vacation rentals. ***We would further require the Auditor, in coordination with the Department of Taxation, to review Act 326, SLH 2012 to determine if the law is working as it was originally intended and to offer their insight in this convoluted topic.***

In 2012, the Legislature passed Act 326, which required any operator of a transient accommodation to designate a local contact residing on the same island as the transient accommodation, amongst other requirements. However, this issue has additional layers of complexity, as there are other HRS Chapters that this issue affects:

Real Estate Licensee – HRS 467
A property owner can sell, buy, lease, and manage his/her own property without a real estate license.

Real Estate Licensee – HRS 467
A property owner can hire a custodian or caretaker to manage or care for his/her property. The "custodian" or "caretaker" doesn't need a real estate license so long as he/she is employed by the owner. The exemption is limited to managing one property.

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Residential Landlord Tenant Code – HRS 521

A property owner who rents or leases their own property must comply with Hawaii's Residential Landlord-Tenant Code. Among other things, the Code requires owners and landlords who reside outside of the state or on another island to designate an on-island agent to act on the owner's behalf. The designated on-island agent must be licensed if engaging in any activity for which a real estate license is required.

State & County Tax Laws – HRS 237D

A property owner must comply with applicable state and county tax laws. State tax law requires persons who operate transient accommodations to designate a local contact who resides on-island, in case of an emergency or natural disaster, or to answer any questions, concerns, or property issues that arise about the transient accommodation.

Mahalo for the opportunity to testify.

HAVRM

March 4, 2015

The Honorable Tom Brower, Chair
House Committee on Tourism State
Capitol, Room 312
Honolulu, Hawaii 96813

RE: HR 22 / HCR 48, REQUESTING THE AUDITOR TO CONDUCT AN ANALYSIS OF THE NEED FOR THE LICENSING AND REGULATION OF TRANSIENT VACATION RENTALS.

Aloha Chair Brower, Vice Chair Ohno, and Members of the Committee:

I am Dan Monck, here to testify on behalf of the Hawai'i Association of Vacation Rental Managers ("HAVRM").

This letter is written to **COMMENT** upon HR 22 / HCR 48.

The Hawaii Association of Vacation Rental Managers, representing tourism professionals providing transient accommodations on Hawaii's four major islands, believes that the problem of illegal vacation rentals poses a serious challenge to the State's communities and its Tourism industry, and that this challenge needs to be meaningfully addressed.

The problems cited within HR 22/HCR 48 are directly attributable to the State of Hawaii not enforcing existing regulations pertaining to the leasing of real estate in this State, particularly in the area of Transient accommodation stays. **This lack of enforcement is the root cause of this problem. The many issues impacting tourism, affordable housing, consumer protection, and Hawaii tax loss referenced in HR 22, are merely the resulting ramifications of the decision by the State not to enforce Hawaii's real estate and rental regulations.**

It is that simple. The emperor isn't wearing any clothes.

To act as an agent in the leasing of Real Estate in Hawaii requires a person be a real estate broker, a real estate licensee under the supervision of a broker, or a CHO registrant.

This requirement is built upon the requirement that a knowledge base, a skill set, and experience to insure that significant consumer protections are afforded the leasing public, as well as to protect the lessor themselves. By way of example, to be a Real Estate Broker in the State of Hawaii conducting Transient accommodations of 180 days or less requires a minimum of 3 years of licensed experience as an agent, and at least 160 hours of State approved formal training in required areas of knowledge.

This training includes a complete knowledge, and a tested understanding, of Hawaii's Landlord Tenant Code. Understanding the requirements of a "Fiduciary", the obligations of behavior, and performance that this requirement mandates. A complete testing of how to handled other person's monies; the requirements of not "commingling" these monies, that these monies be deposited in a Hawaii domiciled FDIC insured Trust account **auditable at any time by the DCCA/RICO**.

These responsibilities also carry with them the need for these Brokerages to carry significant insurances. Due to the above mentioned duties, Brokerages performing Transient Accommodation rentals will typically carry Professional Liability insurance (aka. Errors & Omissions), in additional to the normal liability insurance protection for their operations. Additionally, these Brokerages are also insured as a final customer protection by the Real Estate Recovery Fund for amounts not to exceed $50,000. This very significant insurance protection translates to very definite protections to the consumer as well as the property owners that these Brokerages serve.

These licensees conducting Transient Accommodations deal with significant funds and responsibility. These individuals are required to be of high character and demonstrate a history of honest behavior. As part of their licensing process, a licensee has to identify to the Real Estate Commission any misconduct or convictions that their person has incurred. This notification is required at time of licensure, and within 10 days of any conviction occurring during their licensure.

Federal and State Fair Housing regulations to insure discrimination in the sale or rental of real estate must be known to be followed. These licensees training, and the continuing education requirements of the State for these licenses is the only way that this important mandate can be met.

By way of example, what are the "protected classes" under Federal Fair Housing as well as Hawaii Fair Housing? How is Hawaii Fair Housing more stringent? What are the laws that make up "Fair Housing" and how do they impact one another. This important knowledge, which is an absolute requirement to know and understand as it constantly evolves, is a critical path item in the leasing of real estate for any period, including Transient Accommodations.

The licensing suggested in HB 825 HD1 has no knowledge, experience, or character requirements. It eviscerates all consumer protections presently required by the State for leasing of real estate to the public, and boldly ignores Federal Fair Housing requirements in addition to Hawaii's own.

We suggest that the "Auditor" look at the complete picture. The protections Hawaiians and visitors enjoy today, as compared to the dearth of protections being suggested in HB 825 HD1.

We would also suggest to insure the best interest of Hawaii are served, and to maximize transparency, that the "Auditor" have no relationship or past involvement with any entity with an interest in HB 825, HLTA, the hotel industry, HTA, HAVRM, or others, that have testified on HB 825 to date.

Mahalo,

Dan Monck
President
Hawaii Association of Vacation Rental Managers
www.HAVRM.org

State of Hawaii
November 2013
Real Estate Commission Bulletin

Off-Island "Agent" – Licensee or Non-licensee?

contents

www.hawaii.gov/hirec

When Act 326, Session Laws of Hawaii 2012, was passed, the Real Estate Branch received many calls from licensees who did not understand Act 326, especially the "Local Contact" identified within this Act, and whether or not this "Local Contact" fulfills the off-island agent requirement as stated in Hawaii Revised Statutes ("HRS") Chapter 521, the Residential Landlord-Tenant Code. If you are offering to rent property owned by an off-island owner, an on-island agent is required by HRS §521-43(f), the Residential Landlord-Tenant Code. "Agent" is not defined in Chapter 521, HRS.

The "Local Contact" defined in Act 326 pertains to HRS Chapter 237D, Transient Accommodations Tax. The "Local Contact" individual is an on-island individual who must register with the Department of Taxation to assist in the collection of taxes regarding the rental property. Act 326, and its "Local Contact" is not necessarily the individual who may act as an on-island agent for off-island rental property owners.

"Agent" is also not defined in HRS Chapter 467, the real estate brokers and salespersons licensing law. As used in HRS 521, "off-island agent" is not defined in Chapter 467. For an off-island property owner, landlord, trustee, or a person with the power of attorney from the owner, who is offering to rent Hawaii property, if the on-island agent is also involved in real estate activities, this on-island agent needs a real estate license.

An "on-island" agent may be one of the following:

a) Hawaii-licensed real estate broker or salesperson; or

b) "Custodian or caretaker" – "custodian or caretaker" is one of the exceptions to requiring a real estate license, and is defined in Chapter 467, HRS, and reads, "Custodian or caretaker" means any individual, who for compensation or valuable consideration, is **employed as an employee by a single owner** and has the responsibility to manage or care for that real property, left in the individual's trust; provided that the term, "custodian" or "caretaker" shall not include any individual who leases or offers to lease, rents or offers to rent, any real estate for more than a single owner; provided further that a single owner shall not include an association of owners of a condominium, cooperative, or planned unit development." (emphasis added)

The "custodian or caretaker" exemption is an unlicensed individual, who for a single owner, manages or cares for the single owner's property. The single owner may be an individual or an entity. The single owner must employ the custodian or caretaker. Information on employing another individual may be obtained from the State Department of Taxation and the State Department of Labor and Industrial Relations. There will likely be other considerations when employing the custodian or caretaker such as requirements for unemployment insurance, workmen's compensation insurance, temporary disability insurance, vacation and sick pay, etc. Single owners may own more than one real property. If the single owner is an entity, however, the entity employing a custodian or caretaker must be licensed as a real estate broker or hire a licensed real estate broker to manage the single owner's property. The exceptions to having a real estate license as listed in HRS §467-2 are for individuals, NOT entities.

Real estate licensees listing and selling investment or rental properties should disclose to potential buyers and the licensees representing them, the requirement for an on-island agent if the buyer of a rental property does not or will not reside on the island where the property is located.

The on-island agent may be a non-licensee or a real estate licensee. Again, depending what the non-licensee on-island agent DOES will determine if the on-island agent requires a real estate license.

They don't seem to get that these are not their funds to use to pay their bills until after the guest has consumed the nights.

Aloha, My partner and I own and operate a condo unit on Maui for both our personal use and as Transient Accommodation. We comply with all Hawaii laws and submit tax revenue to the state. In fact, we took an abandoned property and renovated it, improving the property value and turning it into a small business that generates income both for ourselves, and the State. While I think the State of Hawaii should definitely be investigating and punishing individuals who are not following the current law and who are avoiding paying tax, this bill grants powers to the investigators that are not appropriate for civilians and creates a regulatory framework that seems designed to drive small owner/operators like us out of business. I oppose the bill because: 1. "Local contact" and "On--Island Agent" are not clearly defined. We have a local contact who provides excellent service to our guests. Any attempt to require a licensed realtor to manage our property renders our business unviable. 2. The provision that allows a license to be revoked for "any cause" is too broad and open to abuse. 3. Asking nongovernmental entities to provide the documentation required to prove that TA's are permitted is extensive and redundant, given that there are already zoning laws and policies in place. 4. The requirements for a client trust account are unclear. We already have an account dedicated to the operation of our unit. Is that sufficient? And, if the account is to be held in trust, how can a small owner access the funds needed to pay for the day--to--day running of the condo? We view our unit as a second home and the cash flow it generates is quite modest. We still have to pay condo fees, utilities, property taxes, cleaning fees, etc. If the funds are encumbered, it makes it almost impossible to run our business. 5. The GET and TAT filings requirement is unclear. Couldn't the information be shared between departments? And, since original filings are maintained by the tax department, what constitutes evidence under this clause? 6. The 3--day time frame for an audit is too short given that both my partner and I work full time. As well, where do the records need to be made available? 7. Why would the directors and investigators be exempt from Chapter 76 under the bill? 8. The provisions for access to premises run counter to our legal requirement to provide tenants with notice of intended entry. 9. The inclusion of "club fees" in gross rental seems oddly specific when I believe the intent is to include any "non--discretionary" fees. Mahalo for your time and service to the people of Hawaii, Joe Slabe

Maui Property owner from HomeAway.com

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HOUSE OF REPRESENTATIVES
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

COMMITTEE ON TOURISM
Representative Tom Brower, Chair

3/4/2015
Rm. 312, 10:45 AM

HCR 48 & HR 22
Relating to Taxation

Chair Brower & Members of the Tourism Committee, my name is Max Sword, here on behalf of Outrigger Enterprises Group, in opposition to HCR 48/HR 22.

You all know the old saying, "If it looks, walks & quack like a duck, it must be a duck!" Well in his case it applies.

Why do we need an analysis on the need to license and regulate transient vacation rentals? The definition of transient accommodations in chapter 237 states:

*"Transient accommodations" **(§237D-1, HRS)** means the furnishing of a room, apartment, suite, or the like which is customarily occupied by a transient **for less than one hundred eighty consecutive days** for each letting by a hotel, **apartment** hotel, motel, condominium property regime or apartment as defined in chapter 514A or unit as defined in chapter 514B, cooperative apartment, or rooming house that provides living quarters, sleeping, or housekeeping accommodations, or other place in which lodgings are regularly furnished to transients for consideration.*

Does a TVR not look, walk and quacks like a transient accommodation? Why can't we include TVRs in the same definition and chapter, instead of trying to jump through extra hoops and create a new chapter?

Incorporate TVRs in chapter 237.

Mahalo for allowing me to testify.

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March 3, 2015

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To: Rep. Tom Brower, Chair
House Committee on Tourism

From: Damon Key Leong Kupchak Hastert for
Alicia Humiston, President
Rental By Owner Awareness Association

Date: Wednesday, March 4, 2015
Time: 10:35 A.M.
Place: Conference Room 312

Re: **HCR 48 / HR 22 – Requesting the State Auditor to Conduct a Sunrise Analysis on H.B. 825 and S.B. 1237**

Dear Chair Brower and Members of the House Committee on Tourism,

We represent the Rental By Owner Awareness Association ("RBOAA"), a Hawai'i non-profit corporation whose mission is to provide accurate information about Hawai'i vacation rentals to property owners, support the Hawai'i economy by ensuring that visitors have sufficient options in their selection of accommodations, provide Hawai'i vacation rental property owners with information to help them comply with applicable State and County regulations, and to advocate for the rights of Hawai'i vacation rental property owners. RBOAA has an active membership of over 500 members who are tax-paying, law abiding owners of rental property in Hawai'i. We have been asked by RBOAA to provide this analysis.

For the reasons set forth below, RBOAA **opposes** HCR 48 and HR 422; alternatively, if H.B. 825, H.D. 1 is enacted, RBOAA offers **comments** below for consideration by the Auditor pursuant to the "sunrise" analysis requested in HCR 48 and HR 422.

Background

HCR 48 and HR 422 (the "Resolutions") request that the Office of the Auditor (the "Auditor"), in collaboration with the State Department of Taxation ("DOT") and the Hawai'i Tourism Authority ("HTA"), conduct a review of the

proposal to implement a new licensing regime for transient vacation rentals ("TVR's") in H.B. 825, H.D. 1 and its companion bill, S.B. 1237.[1]

H.B. 825, H.D. 1 (the "Bill") creates a new chapter in the Hawai'i Revised Statutes ("HRS") regulating transient vacation rentals and placing enforcement authority under the Department of Commerce and Consumer Affairs ("DCCA"). H.B. 825, HD 1 also amends certain sections of HRS Chapter 327D, related to the Transient Accommodations Tax, to comport with this proposed new chapter regulating transient vacation rentals ("TVR").

The purported intent of the Bill is to address longstanding community concerns about illegal TVRs being operated in communities throughout Hawai'i by implementing a new, statewide licensing requirement. RBOAA shares these concerns, but believes that the Bill does not effectively address these concerns and **opposes** the Bill for the reasons set forth in its testimony to the House Committee on Finance, attached hereto as Exhibit A.

Consistent with its position on the Bill, RBOAA **opposes** the Resolutions. In the event the Bill is adopted, however, RBOAA offers the following **comments** with regard to the Resolutions.

Analysis

The Resolutions call for the Auditor to conduct an analysis of the Bill to determine whether the implementation of a new licensing regime for TVRs is warranted under the Hawai`i Regulatory Licensing Reform Act, HRS Chapter 26H (the "Act"). Whenever new regulation of an industry is proposed by the Legislature, the Act requires that the Auditor conduct an analysis of the new regulations, the probable effects of the new regulations, and whether enactment is consistent with the policies set forth in the Act. Haw. Rev. Stat. § 26H-6 (2009). The policies guiding this "sunrise" analysis are set forth in Haw. Rev. Stat. § 26H-2, which provides, in relevant part:

[1] To date, action on S.B. 1237 has been deferred by the three Senate committees (Tourism and International Affairs; Public Safety, Intergovernmental and Military Affairs; and Commerce and Consumer Protection) to which the bill was initially referred. Accordingly, the analysis herein is limited strictly to H.B. 825, H.D. 1.

> The legislature hereby adopts the following policies regarding the regulation of certain professions and vocations:
>
> (1) The regulation and licensing of *professions and vocations* shall be *undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation*;
>
> (2) Regulation in the form of full licensure or other restrictions on certain professions or vocations shall be retained or adopted *when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider*;
>
> (3) *Evidence of abuses* by providers of the service shall be accorded great weight in determining whether regulation is desirable;
>
> (4) Professional and vocational regulations which *artificially increase the costs of goods and services to the consumer* shall be avoided except in those cases where the legislature determines that this cost is exceeded by the potential danger to the consumer[.]
>
> *Id.* (emphasis added).

RBOAA believes that the licensing of TVRs contemplated by the Bill is inconsistent with the policies underlying the Act for the following reasons:

1. **Ownership and management of TVRs is not a "profession or vocation" subject to regulation.** Owners of TVRs are not engaged in a profession or vocation that requires licensing. TVR owners have a constitutional right to rent their property to others, subject to reasonable regulation by the state, county, and federal governments, just like any other property owner in the State of Hawai'i. They are not engaged in a regulated profession like nursing, dentistry, or

medicine that requires a certain level of training and skill to meet a basic level of competency and to avoid endangering the public health and welfare.

2. **The licensing regime is not warranted because it is not reasonably necessary to protect the health, safety, and welfare of TVR customers.** To meet the requirements of Chapter 26H, the regulation and licensing of a profession or vocation must be "reasonably necessary to protect the health, safety, and welfare of consumers" of TVRs. Haw. Rev. Stat. § 26H-2(1). Regulation and licensing is not warranted here because there is no credible evidence of any danger to the health, safety, and welfare of consumers caused by short-term rentals that otherwise comply with all applicable county, state, and federal laws. Unlike medicine or dentistry, renting out one's own property is not an inherently dangerous activity requiring licensing to ensure a base level of competency and protection of public health or welfare.

The Bill's proponents assert that implementing a licensing regime is necessary to address alleged longstanding community concerns about illegal TVRs operating in local communities. Although RBOAA shares these concerns, anecdotal information on the rise of illegal TVRs and community complaints about the impacts of TVRs, by itself, is not enough to justify implementing a new regulatory regime when the public health, safety, and welfare is not threatened in any way.

3. **The licensing regime's purpose is not to protect the public welfare**. In order for a regulatory regime to be valid, it must be enacted for the protection of the public welfare, not for the protection of the regulated profession or vocation. Haw. Rev. Stat. § 26H-2(2). As discussed above, the regulatory regime in the Bill does not appear to be proposed for this purpose as there is no actual evidence of TVRs creating a public health, safety, or welfare problem that poses a threat to consumers. Instead, the potential threat to the public safety, health, and welfare is largely anecdotal and appears to be driven by two different groups seeking to curb the growth of TVRs: (1) members of communities that are highly desirable to visitors looking for alternatives to the typical Hawai'i resort experience; and (2) the hotel industry, which perceives the rise in popularity of TVRs as a threat to its dominant position in the visitor accommodation market. The imposition of a licensing requirement is an exercise of the State's police power that should not be lightly imposed, and only when there is a credible threat to the public welfare. No such threat exists here.

4. **There is no clear evidence of abuse by owners of TVRs supporting the enactment of the licensing regime contemplated in the Bill.** Haw. Rev. Stat. § 26H-2(3) provides that one of the policies the Auditor must consider in determining the appropriateness of regulation by licensing is actual evidence of abuses by the provider of the services to be regulated. The Resolutions list two sources as specific examples of evidence of supposedly widespread abuse of TVR laws: (1) a December 2014 study by SMS Research & Marketing Services ("SMS") for the HTA summarizing the total number of individually advertised vacation rentals in Hawai'i; and (2) a series published in the Honolulu Star-Advertiser in December 2014 on the proliferation of TVRs titled "Rogue Rentals."

Neither source provides evidence of abuse justifying the level of regulation contemplated in the Bill. The SMS study provides a summary of the statewide total of "Individually Advertised Units," defined as units that were found after searching four major websites for vacation rentals in Hawai'i.[2] The SMS study concluded that there are approximately 22,238 "Individually Advertised Units" statewide, allegedly representing approximately 25% of the total number of lodging units in the state. *Id.* at 4-5. The SMS study does not, however, provide any evidence of noncompliance with applicable laws, much less abuse, by owners of TVRs to justify the need for a comprehensive licensing regime. Moreover, many of the listings are by property managers. Many others are time share listings. The SMS study is therefore of little use. Similarly, the December 2014 "Rogue Rentals" series in the Honolulu Star-Advertiser does nothing more than relay anecdotal, unverified information on alleged abuses of TVR laws by owners or, more likely, internet thieves or scammers who would not comply with licensing requirements in any event. Without more, there is no credible evidence of abuse justifying the implementation of the licensing regime in the Bill.

5. **Enactment of the Bill would artificially increase the costs of goods and services and such an increase is not justified by the potential danger to the consumer.** Haw. Rev. Stat. § 26H-2(4) provides that the professional and vocational regulations which artificially increase the costs of goods and services to the consumer shall be avoided, except where the Legislature determines that this cost is exceeded to the potential danger to the consumer. As discussed above, the potential danger to the consumer posed by TVRs is non-existent. There are already a substantial number of laws in place regulating permissible lengths of stay, location, density, and taxation of TVRs. The Bill does

[2] The websites are VRBO, Clearstay.com, TripAdvisor, and Airbnb. SMS Study, at 2.

not add to these in any meaningful way, other than to standardize what constitutes a TVR (at odds with and arguably usurping county jurisdiction in this area), require TVR owners to register with the DCCA for a fee, require TVR owners to pay for the costs of inspections of potential violations (even when no violation is found), and pay severe financial penalties in the event of noncompliance. Applied here, the increased costs and risks associated with the new licensing regime contemplated in the Bill will raise the costs of doing business for TVR owners with no offsetting benefit to the general public.

For the reasons set forth above, RBOAA **opposes** HCR 48 and HR 422. Alternatively, in the event H.B. 825, H.D. 1 is enacted, RBOAA provides the **comments** above for the Auditor's consideration in conducting a "sunrise" analysis on the issue of whether H.B. 825, H.D. 1 meets the policy requirements for implementing a new regulatory regime under HRS Chapter 26.

Respectfully submitted,

DAMON KEY LEONG KUPCHAK HASTERT

Gregory W. Kugle
Ikaika B. Rawlins

GWK/IBR:ds
cc: Ms. Alicia Humiston, President
Rental By Owner Awareness Association
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March 3, 2015

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James C. McWhinnie
Kelly Y. Morikone
Mark M. Murakami
Anna H. Oshiro
E. Kumau Pineda-Akiona
Ikaika B. Rawlins
Douglas C. Smith
Robert H. Thomas[1]
Sommerset K.M. Wong
Michael A. Yoshida
Madeleine M.V. Young[1]

Of Counsel
R. Charles Bocken
Sara E. Coes[2]
C.F. Damon, Jr.
Tred R. Eyerly
Clare M. Hanusz
Judith A. Schevtchuk

Charles W. Key
(1929-2008)

[1]Admitted in Hawaii and California
[2]Admitted in Hawaii and New York

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To: Rep. Sylvia Luke, Chair
House Committee on Finance

From: Damon Key Leong Kupchak Hastert for
Alicia Humiston, President
Rental By Owner Awareness Association

Date: Wednesday, March 4, 2015
Time: 11:00 A.M.
Place: Conference Room 308

Re: H.B. 825, HD 1, Relating to Transient Accommodations

Dear Chair Luke and Members of the House Committee on Finance,

We represent the Rental By Owner Awareness Association ("RBOAA"), a Hawai'i non-profit corporation whose mission is to provide accurate information about Hawai'i vacation rentals to property owners, to support the Hawai'i economy by ensuring that visitors have sufficient options in their selection of accommodations, to provide Hawai'i vacation rental property owners with information to help them comply with applicable State and County regulations, and to advocate for the rights of Hawai'i vacation rental property owners. RBOAA has an active membership of over 500 members who are tax-paying, law abiding owners of rental property in Hawai'i. For the reasons set forth below, RBOAA **opposes** H.B. 825, HD 1. We have been asked to analyze and summarize the flaws in the legislation.

Analysis

H.B. 825, HD 1 (the "Bill") creates a new chapter in the Hawai'i Revised Statutes ("HRS") regulating transient vacation rentals and placing enforcement authority under the Department of Commerce and Consumer Affairs ("DCCA"). H.B. 825, HD 1 also amends certain sections of HRS Chapter 327D, related to the Transient Accommodations Tax, to comport with this proposed new chapter regulating transient vacation rentals ("TVR's").

EXHIBIT "A"

The purported intent of the Bill is to address longstanding community concerns about illegal TVRs being operated in communities throughout Hawaii by implementing a new, statewide licensing requirement. RBOAA shares these concerns, but believes that the Bill does not effectively address these concerns and, therefore, **opposes** the Bill for the following reasons:

1. **The Bill creates an unnecessary layer of State regulation.** TVRs are currently regulated by the various Counties where applicable.[1] Each County has its own definition of what constitutes a TVR,[2] enforcement procedures, and schedule of penalties for violations of regulations governing transient vacation rentals within their respective zoning ordinances. Thus, the fundamental problem in addressing illegal TVRs is not a lack of rules and penalties; rather, it is a lack of enforcement (or perceived lack of enforcement) of these rules and issuance of penalties that has led to the proliferation of illegal TVRs, particularly on the island of O'ahu.

Instead of addressing the enforcement issue, the Bill seeks to cure the illegal TVR problem by broadly defining TVRs as any dwelling unit in the State that is let for compensation for 180 days or less per rental, and imposing a new licensing and regulatory regime on owners of property fitting this definition. By defining TVRs so broadly, the State effectively proposes to usurp county authority over administration of their zoning ordinances, violating principles of "home rule" contained in the Hawai'i Constitution[3] and State law[4] generally delegating zoning authority, including defining the proper subjects of such authority, to the Counties.

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[1] Hawai'i County does not regulate TVRs. For Maui County TVR regulations, *see* Maui County Code §§ 19.37010 and 19.40.010-110. For City and County of Honolulu TVR regulations, *see* ROH §§ 21-5.640 and 21-4.110-1. For Kaua'i County TVR regulations, *see generally* Kaua'i County Code § 8-17.

[2] There is substantial variation in how each County defines TVRs, presumably due to the variation in population density and demographics of each county. Hawai'i County, the largest in land area, does not define and, therefore, does not regulate, TVRs. Maui County and Kaua'i County define TVRs as dwelling units provided to transients for compensation for any period of less than one hundred eighty (180) days. *See* Maui County Code § 19.04.040; Kaua'i County Code § 8-1.5. The City and County of Honolulu, the most densely populated of the counties, defines a "transient vacation unit" as a "dwelling unit or lodging unit which is provided for compensation to transient occupants for less than 30 days, other than a bed and breakfast home." Rev. Ord. Honolulu § 21-10.1.

[3] *See* Haw. Const. Art. VIII, § 2 (1978) ("Each political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general law."). ;

[4] *See* HRS § 46-4 (2009).

County-level problems require county-level solutions. The creation of a new licensing regime under the DCCA does nothing to address the root cause of the proliferation of TVRs. Instead, it creates another layer of bureaucracy that even the DCCA believes is not an effective response to address issues relating to illegal TVRs.[5]

2. **The Bill creates an unconstitutional restriction on property rights.** By defining and regulating rentals of dwelling units for 180 days or less, the Bill creates an arbitrary and unreasonable restriction on the right to rent and the right to live and move freely. For example, an ordinance that banned seasonal rentals of single family dwellings near the New Jersey shore was held to be an arbitrary and unreasonable restraint on the use of private property. *United Property Owners Assoc. v. Belmar*, 185 N.J. Super. 163 (N.J. Super. Ct. App. Div 1982). The Bill would impose a new regulatory regime on owners who rent to students, contractors, military, construction workers, farm workers and others whose rental needs in Hawai'i are less than 180 days. Moreover, the Landlord Tenant code already exists to protect the rights of tenants.

3. **The Bill unnecessarily requires TVR owners to open client trust accounts to handle customer funds.** Section 6 of the Bill requires each owner of a TVR licensed under the new chapter to establish a client trust account in a federally insured financial institution located in Hawai'i to hold customer funds. The alleged purpose of this requirement appears to be to ensure sufficient funds are available to refund customers in the event of cancellation and protect consumers from a TVR owner absconding with their funds. RBOAA believes that this requirement is wholly unnecessary and cannot point to another non-professional industry in Hawai'i that is required to maintain a client trust account. Furthermore, there is no evidence to support the underlying assumption that TVR customers have been financially harmed by TVR owners. The Landlord/Tenant code and criminal and civil laws prohibiting fraud already exist to protect tenants' rights.

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[5] "RICO [DCCA's Regulated Industries Complaints and Enforcement Division] acknowledges that oversight of transient vacation rentals has been an ongoing concern for state and county agencies. *It is unclear, however, whether the licensing and enforcement provisions in House Bill No. 825 are an effective response to address issues relating to transient vacation rentals.*" State of Hawaii, Dep't of Commerce and Consumer Affairs, *Testimony to the House Comm. on Tourism on House Bill No. 825 Relating to Transient Accommodations* (Feb. 4, 2015) (emphasis added).

4. **The Bill's requirement that TVR owners allow the DCCA to inspect and audit their records is unnecessarily duplicative.** Section 6 of the Bill requires TVR owners to maintain all financial records related to TVR operations for at least two years and gives DCCA the authority to audit and inspect these records upon three days written notice to the owner. This requirement is unnecessarily duplicative as owners are already required to supply this information to the Department of Taxation upon request.[6]

5. **The Bill's enforcement provisions create confusion as to the roles and responsibilities of the State and County governments in enforcing its provisions.** Section 8 of the Bill allows the Director to contract with qualified persons or delegate to the Counties enforcement of the provisions of the Bill. As discussed previously, not only does this provision contradict the general authority of the Counties to administer and enforce their own zoning laws, it also creates confusion as to the roles of State and County government with regard to enforcement of the Bill's provisions. For example, if an owner violates one of the Bill's provisions, but is otherwise in compliance with applicable County law, can the County properly enforce this violation? The overlap of State and County jurisdiction created by this Bill make enforcement untenable. Furthermore, it appears to be another unfunded mandate to the Counties, with no provision to fund the increased enforcement responsibilities of the Counties.

6. **The Bill's enforcement provisions unfairly shift the costs of enforcement to private property owners.** Section 8(e) of the Bill provides that an owner shall be required to pay an amount estimated to be necessary to cover the actual expenses of any inspection to determine a violation of the provisions contained in the new chapter. This provision highlights the absurdity of the Bill. The State recognizes that the challenge in enforcing illegal TVR's is a lack of funding dedicated to enforcement. But instead of providing funds to Counties or otherwise leaving the issue of securing funds for enforcement of County laws to the Counties themselves, the State proposes to shift the burden of funding enforcement to individual, taxpaying citizens. This is grossly unfair to the property owner, particularly if the property owner is deemed not to be in violation of any zoning

[6] *See* HRS § 237-39 and 40 (2014) (requiring taxpayer to maintain records for three years and granting the Department of Taxation the right to inspect and audit those records for purposes of determining the taxpayer's liability for G.E. taxes); HRS § 237D-12 (2014) (requiring taxpayer to maintain records for three years and granting the Department of Taxation the right to inspect those records for purposes of determining the accuracy of taxpayer's transient accommodation tax liability).

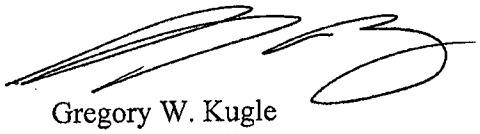
laws as there appears to be no method in the Bill for obtaining a refund under those circumstances.

7. **The Bill's penalties are unnecessarily severe.** Section 9 of the Bill provides that any owner who fails to comply with this new chapter will be assessed penalties of up to $10,000 for each separate offense. These penalties are unnecessarily severe, particularly when the violation relates to an administrative-type offense (e.g., failure to update owner and property information within the time limits prescribed by the Bill).

For the reasons set forth above, RBOAA **opposes** H.B. 825, HD 1.

Respectfully submitted,

DAMON KEY LEONG KUPCHAK HASTERT



Gregory W. Kugle
Ikaika B. Rawlins

GWK/IBR:ds
cc: Ms. Alicia Humiston, President
Rental By Owner Awareness Association
269676

brower1-Luke

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 03, 2015 10:57 AM
To: TOUtestimony
Cc: malia@southkohala.com
Subject: Submitted testimony for HR22 on Mar 4, 2015 10:35AM

HR22
Submitted on: 3/3/2015
Testimony for TOU on Mar 4, 2015 10:35AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Malia Rozetta	South Kohala Management	Oppose	No

Comments: Dear Hawaii State Legislature, I am the owner and President of South Kohala Management, a property management firm handling over 100 vacation rentals in the resort communities of the Kohala Coast, on Hawaii Island since 1982. The tourism industry is a key industry in Hawaii and needs to be regulated effectively in order for our state prosper. There is a lot of opportunity to increase occupancy at the local hotels and vacation rental properties across our island, but business is being siphoned away from these legal and professional tourism sectors to the growing quantity of “illegal” vacation rentals that are managed by the non-resident property owner from out of state. Professionally managed legal vacation rentals collect the GE and TA taxes and have to compete against rentals that do not impose this mandatory tax. This has put pressure on nightly rates and it has been hard for local property managers to compete with nonresident owner-managed illegal vacation rentals that don’t charge these taxes and undercut our prices. Some of them do pay these taxes, but drastically underreport their actual revenue. Many non-resident vacation rental operators hire housekeepers and handymen hourly as independent contractors and do not report these wages, encouraging the expansion of a huge underground economy in Hawaii. When you really look at the big picture, the net effects of this unregulated business activity is the evaporation of millions of dollars of revenue to local businesses, workers, and tax revenue to the state. I submit the above testimony for consideration by the state to reject bill HD 22. The Hawaii Landlord Tenant Code already requires that non-resident property owners must use a local “agent” to rent lodging for a transient accommodation. It is only logical that someone with a real estate license, who is trained and certified on the state’s current leasing laws and their application, be the required “agent” of transient accommodations (except for the custodian-employee exemption). All of the requirements of the “local contact” that this bill proposes are already duties and skills of licensed property managers. It is only logical that this multi-million dollar key industry be operated by licensed, local professionals who are easy for the state to monitor and regulate. If there are so many qualified “local contacts” to manage vacation rentals then why don’t they just get a real estate license? The reason is because they don’t really exist. This bill is just a loophole to allow non-resident vacation rental operators to handle their own leasing activity and evade the laws. It allows these owners to continue to pay people under the table and evade the laws. This does immeasurable harm to our economy and workforce. Who does the state have a duty to protect? Out-of-state homeowners/investors who ignore the law to increase their profits? Or local, licensed and regulated business operators who pay their fair share of taxes, create jobs and have a vested interest in our local communities? I urge you to reject HD 22 for the interests of consumer protection, public safety, to support local businesses in creating jobs, and to strengthen our tourism industry through effective regulation. Sincerely, Malia Rozetta President

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brower1-Luke

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 03, 2015 11:12 AM
To: TOUtestimony
Cc: allan@crhmaui.com
Subject: Submitted testimony for HR22 on Mar 4, 2015 10:35AM

HR22
Submitted on: 3/3/2015
Testimony for TOU on Mar 4, 2015 10:35AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Allan Raikes	Condominium Rentals Hawaii	Oppose	No

Comments: I fully support the position of HAVRM on this matter.

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Neal Halstead
C312, 2531 S. Kihei Road
Kihei, HI
96753
nealhalstead@yahoo.ca

Dear Rep. Brower and Members of the House Tourism Committee:

In general, I **SUPPORT** the proposal to have the Auditor conduct an analysis of the need to license or regulate Transient Vacation Rentals. It will be beneficial to have the truth documented and to put an end to the fallacies, half-truths and lies which have been perpetuated since 2012.

As has been observed previously by this committee, the proposal to license the transient vacation rental market is nothing more than a **turf war** between a) the hotel industry, b) the vacation rental property managers and c) individuals who rent out their personal property to tourists when they are not on the islands.

It is my fervent hope that the audit be **OBJECTIVE** and **UNBIASED** and not designed to simply appease one party at the expense of another. Unfortunately, the fact that the motion specifically refers to a newspaper editorial series as the foundation for the need to license transient vacation rentals does not give me confidence.

Many of the studies completed to date have been commissioned by parties to further their own agendas.

- For example, the SMS study (referred to in the motion) identified 22,000 individually advertised units (which the motion then implies are mostly illegal).
    - We know many owners advertise in multiple websites.
    - We know there are hotels advertising on VRBO.com.
    - The study did not determine how many of the advertisements list the TAT registration number as required under Act 326.
    - The study did not determine how many advertised properties are legally located in zoned areas vs. those not in zoned areas.
- For example, no study has been done to determine if landlords who have registered for TAT and GET collect and remit the proper amount of TAT and GET or if the issue of lost tax revenue is with those who have not ever registered for TAT and GET. The assumption has simply put forward that all out of state owners do not collect and remit tax. That is clearly a fallacy.

The motion provides no identified need for which consumer protection other than there are some scam artists out there. However, as you are well aware, regulation or licensing does not prevent crime committed by someone who is not licensed.

The motion also refers to illegal rentals outside of Waikiki, effectively making an Oahu issue into a Hawaii issue. This is a county issue, not a state issue.

No consumer need has been identified. No health, safety or welfare issue has been identified. No issue of special training and qualifications has been raised.

In conclusion, if this study is set-up with terms of reference that are fair, transparent and unbiased, I am sure the result will be appropriate.

Mahalo for your time and consideration

Neal Halstead

brower1-Luke

From: Elen Stoops <stoopse@gmail.com>

Sent: Monday, March 02, 2015 5:58 AM
To: auditors2@auditor.state.hi.us; TOUtestimony
Cc: Kauai Dirtbuster; mike.white@mauicounty.us; donishi@co.hawaii.hi.us; kkualii@kauai.gov; robert.carroll@mauicounty.us; michael.victorino@mauicounty.us; GAD@ramaui.com
Subject: Hearing Wed. March 4, TOU Hearing on HCR48 and HR22

Note to: Hawaii State Office of the Auditor,
Please deliver immediately to Jan K. Yamane. Mahalo.

Dear Legislative Members of the TOU Committee and the State Auditor of Hawaii,

I am an owner of a self-managed vacation condo in a hotel zone in Maui. I am fully compliant with the requirements to provide my Tax ID on internet advertisements, to remit appropriate TA and GE taxes and to provide a local contact, as described in Act 326.

I offer the following information for your consideration and action on HCR48 and HR22

Evaluation of known factual data indicates that legal TVRs should not be considered in the same light as the unique situation for illegal TVRs largely found in Oahu.

However, the documentation provided in support of bringing forward this request for a new regulatory branch under the DCCA is per a StarAdvertiser news series titled Rogue Rentals.

Adequate law for regulation of owners of transient vacation rentals already exists in Act 326 and Hawaii tax code 237D.

Success and/or failure to regulate TVRs in individual counties should continue to reside within the counties.

A more appropriate utilization of State's Audit resources would be starting with an analysis of effectiveness and levels of enforcements within the counties. I suggest that there should be both an analysis and conclusion with recommendations provided from the Office of the State Auditor for each of the counties to improve their effectiveness in managing the TVR environment unique to their respective counties.

Following an understanding of individual counties' enforcement strategies and enforcement accomplishments, it shall be clearer if any additional regulation as proposed in HCR28 or HR22 is appropriate.

Separately, to assist the State Legislators and State Agencies to understand where they should most effectively focus future efforts to improve tax collections, and to update a tax remittance study that was done prior to 2007, we request that the State Auditor direct the Hawaii Tourism Authority (HTA) to create an new tax study done in conjunction with Department of Taxation.

In that there seems to be confusion and repeated misinformation spread on where tax remittance problems are

occurring, and in that since 2012 certain groups have been isolated for application of new regulations where no data exists to support application exclusively to an artificially defined subgroup, this study shall serve as a useful guide.

Specifically, tax compliance levels for TA and GE tax remittance for vacation rentals owners should be analyzed and reported upon in the following 6 subgroups to factually and if required legally isolate primary offenders of Act 326 and applicable Tax Code requirements of HRS 237D:

1. individually owned units that are rented through the use of an agent in Property Management or Condominium Hotel Operator Rental Pool Programs

2. individually owned units that are rented directly to guests by the owner

3. individually owned units that are owned by non-residents

4. individually owned units that are owned by HI residents

5. individually owned units that are permitted and have a tax certificate

6. individually owned units that are not permitted to operate as vacation rentals

HTA is a State Agency formed in 1997. It is funded by Transient Accommodation Taxes for which our vacation rentals taxes are providing a significant portion of the TA revenues owed to the state. Individually owned units now represent an estimated 25% of Hawaii's total lodging capacity (per HTAs most recent report dated Dec. 2014).

HTA has said that their charter includes performing studies on four major areas which include Visitor Satisfaction Surveys and Tax Receipts.

We, owners of legal self-managed and/or individually owned vacation rentals, request that a study be updated and made available for the public. This study should accurately articulate the role we play in providing tax revenues and visitor satisfaction levels/consumer support for Hawaii's Tourism Industry.

It is requested that the proposed HTA/Department of Taxation study show same levels for each of the 6 groups listed above.

Thank you for considering my comments and suggestions to HCR48 and HR22.

brower1-Luke

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 02, 2015 7:11 AM
To: TOUtestimony
Cc: carabirk@gmail.com
Subject: Submitted testimony for HCR48 on Mar 4, 2015 10:35AM

HCR48
Submitted on: 3/2/2015
Testimony for TOU on Mar 4, 2015 10:35AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Cara Birkholz	Individual	Comments Only	No

Comments: Mahalo for the opportunity to testify. While I appreciate that there are illegal vacation rentals in Hawaii and that it is necessary to bring them either into compliance or shut them down, I ask that you please take the necessary steps to ensures the thousands of legal vacation rentals are not penalized in the process. I am a resident of Maui and own/operate four legal vacation rentals. Mahalo, Cara Birkholz 808-281-7934

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brower1-Luke

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 02, 2015 4:55 AM
To: TOUtestimony
Cc: baitken@knitart.com
Subject: Submitted testimony for HCR48 on Mar 4, 2015 10:35AM

HCR48
Submitted on: 3/2/2015
Testimony for TOU on Mar 4, 2015 10:35AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Bonnie Aitken	Individual	Comments Only	No

Comments: Dear Legislators, My name is Bonnie Aitken and I own and self- manage my condo as a Temporary Vacation Rental (TVR). I am fully compliant with all requirements to provide my Tax ID on internet advertisements, to remit TAT and GET taxes and to provide a local contact, as described in Act 326. I had to apply to the county Finance Department and the Planning Department and provide them with proof that my property is within the area designated by the county as an approved TVR property. I have a registration number with my county. I also have a registration number with the state who issued me a TAX ID number. The state tax department sends me the forms for me to remit my taxes. The state and local government knows me and has approved my property. I am a legitimate small business and I contribute to the tax base for Hawaii. Because I advertise my property on the VRBO and Home Away web sites, I am already regulated in the sense that both web sites have Traveler Reviews on the web sites. This is how the public is protected. The system is self- policing. If I do not offer a good service or harm the tourist in any way, that tourist would report that in the Review of the TVR. Everyone would know what the visitor thought of their accommodations immediately. Visitors are quite vocal. They will not tolerate poor service. I do not need a government regulation to force me to provide a great service. I simply must if I am to succeed in running a successful TVR unit. From my perspective, I do not see a need for government intervention and regulation. Save your tax dollars for something that truly is needed. I am quoting from the Council on Licensure, Enforcement, and Regulation" The primary guiding principle for Legislators should be whether or not an unregulated profession presents a clear and present danger to the public health, safety, and welfare. If the answer is no, regulation is unnecessary and wastes taxpayer money." Where is the evidence that legal, self-managed TVR operators are a clear and present danger to consumers? Might I respectfully request that in your sunrise analysis, you look at the Traveler Reviews on both VRBO and Home Away websites for the legal, self-managed TVR owner-operators. I can offer you my site for an example of what I perceive to be a well-run TVR. Look at www.homeaway.com/157076 and study the reviews. Where is the "clear and present danger" to the consumer? Successful TVR properties well managed by their owner's benefit Hawaii and the tourists. There is no better voice than the tourist to ascertain whether or not they are happy with their experiences with the TVR community. A poorly run TVR will simply not survive, no government intervention needed. They will not invest in advertising on these sites and will not be successful. Illegal TVR units are another matter. There are currently adequate laws that if enforced will solve that issue. Simply follow existing laws. You do not need more laws that inhibit and overburden legitimate small businesses. Another aspect of the Sunrise Analysis is to study the probable effects the proposed regulatory programs will have on the currently unregulated industry. The regulations

proposed in HB825 and SB 1237 for which this Sunrise analysis has been requested, are draconian in nature and will have a chilling effect on owner managed TVR properties. The regulations would benefit the hotel and property manager industries at the expense of the owner-managed TVR industry and actually harm the consumer by depriving them of many owner managed TVRs that would be forced to close. Why would the Legislators want to damage legitimate, legal small businesses that provide ~25% of the TVR units in Hawaii? The tourist industry is a substantial portion of Hawaii's economic activity. Why would you choose to damage 25% of it? Thank you for considering my comments and suggestions to support Hawaii's Tourism Industry, Tax Collections, and Consumer Protection.

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Dear Members of the Committee:

While I oppose the re-referred HB825 HD1 and the deferred SB1237, and would encourage all legislators to do the same, I provide only comment on HCR48 and HR22.

I note also that I have separately provided copies of this testimony to the Right Honourable Stephen Harper, Prime Minister of Canada, the Honourable Ed Fast, Canadian Minister of International Trade, the Honourable Premiers of Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia, the Canadian Chamber of Commerce, and the chambers of commerce of Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia. Our federal government deals with international trade, and these five provinces are home to most of the 517,000 Canadians who visited Hawaii last year, and those most likely to have made cross-border investments there.

In addition, I draw your attention to a piece published by The Vancouver Sun on the recent actions of Hawaii in respect of Canadians' cross-border opportunities and protections under the North American Free Trade Agreement (NAFTA):

http://www.vancouversun.com/Opinion+Call+Hawaii+extortionate+state/10855594/story.html

HCR48/HR22 aim to have the Auditor undertake an analysis of the licensing and regulation of transient vacation rentals advanced in the above-reference bills. Indeed, as HCR48/HR22 note, part of the Auditor's effort is to weigh in on the "restrictions" to be placed on an owner's legal operation of a vacation rental property in Hawaii.

I note that many Canadians will have invested in in the United States, i.e., Hawaii and any of the states, due to the provisions, opportunities and protections spelled out in the "North American Free Trade Agreement" (NAFTA), which began on January 1, 1994. This agreement removes most barriers to trade and investment among the United States, Canada, and Mexico.

In respect of the obligations of Hawaii under NAFTA Chapter 11, *Article 1106: Performance Requirements,* a read of HB825 HD1 sees it fail the NAFTA test on the most primary of grounds in that HB825 HD1 is "[A] disguised restriction on international trade or investment." Accordingly, while I'm sure the Auditor's review will be thorough and unbiased, it remains that it would be undertaken, per HCR48, to determine if enactment of HB825 HD1 " . . . is consistent with the policies set forth in 26H-2 Hawaii Revised Statutes . . ."

Whether HB825 HD1 (or, if similarly re-referred, SB1237) is or isn't consistent with HCR48's named Hawaii Revised Statutes is, with respect, irrelevant to Canadian cross-border investors in Hawaii: That's because legislative or regulatory action to offer "[A] disguised restriction on international trade or investment" simply isn't open to Hawaii in respect of Canadian cross-border investments in the state because of Hawaii's NAFTA obligations to Canada.

To reiterate, Hawaii is a party to NAFTA, and as strong as its desire may be to offer this

restriction on the cross-border investment of Canadians, or to otherwise condition them, the avenue simply is not open to the state. Put simply, Hawaii's desire to advance licensing "restrictions" on the cross-border investments of Canadians in legal vacation rental properties is precluded by Hawaii's NAFTA obligations; the actions or findings of the Auditor per his charge, yea or nay, do not change this immutable fact of NAFTA primacy.

Indeed, and again with the greatest respect to the character and skills of the Auditor, the licensing effort he would seek to determine the worthiness of, i.e., HB825 HD1, also specifies where and how owners of transient accommodations must do their banking, i.e., requiring trust accounts and requiring their location in Hawaii-located banks. This type of requirement is a clear violation of the NAFTA prohibition against, and investor protection from, a NAFTA party, i.e., Hawaii, requiring an investor, "to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory."

But there's still more to HB825 HD1 that renders the actions of the Auditor inapplicable to the opportunities and protections Canadians have under NAFTA for their cross-border investments in Hawaii.

NAFTA Chapter 11 *Article 1102: National Treatment* provides tha**t** each Party shall accord to investors investments of investors of another Party "treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments." Put simply, if Hawaii intends to force Canadian owners of transient accommodations to maintain a trust account for the renting out of such lodging, it will need to apply the same requirement to all in Hawaii who make available their own lodging for rent. Until that happens, per *Article 1104: Standard of Treatment* Canadians investments, and investments of Canadians, i.e., transient accommodations in this instance, are to be accorded *"the better of the treatment required by Articles 1102 and 1103."*

I wish to be very clear that in no way am I disparaging the quality of the Hawaii Auditor. Indeed, I'm sure he'll find that the licensing proposed will fail to meet the tests and standards against which he must judge it. But for Canadian cross-border investors in Hawaii vacation-rental properties, the protections and opportunities Canadians have under NAFTA have primacy to the work HCR48/HR22 would see assigned to the Hawaii Auditor, and any finding he would make as a result of that work.

When Canada signed NAFTA, I can assure you that with a population then of 29 million people, the idea of a trade agreement with the US, with a population of 260 million people, was a scary prospect. If the terms were not clear, if the protections, obligations and opportunities were not clearly spelled out and understood, Canadians knew our way of life could be very much at risk: The US was just so big! So in Canadian provinces and in cities, in neighbourhoods and homes, we tore that draft agreement apart, read it, questioned it, and in the end, had confidence that against the backdrop of the need to tear down barriers to cross-border trade and investment, the final agreement could be endorsed.

I note, therefore, an article in the January/February 2015 edition of "Capitol Ideas" published by the Council of State Governments. In "Trade Deals Get More Attention Due to NAFTA," Managing Editor Mary Branham writes the following:

"The way Hawaii Rep. Roy Takumi sees it, states didn't pay close attention to the impact free trade agreements would have on state policies in the 1990s, when Congress passed the North American Free Trade Agreement, known as NAFTA.

"They're paying attention now. 'As (free trade agreements) started to proliferate, legislators, including myself, became more aware of how these trade agreements went beyond international trade and encroached into what (were) matters that states and only states historically dealt with,' Takumi said. That includes procurement, investment and service policies.

"As Congress considers additional trade agreements with South Korea, Colombia and Panama, state policymakers are taking action and making their concerns known. That includes what they perceive as lost jobs. But Takumi and others say it goes well beyond that. 'In every (free trade agreement), there may be sections that are benefits and others that are not,' he said. 'Or it could be beneficial / negative to some states and not to others.'

That's why a growing number of policymakers are questioning whether the federal government should have the power to unilaterally bind states to provisions of those agreements. In fact, a bipartisan group of lawmakers from across the country crafted a letter asking Congress to prioritize state sovereignty in any U.S. trade agreements. . . . 'At a minimum,' said Takumi, 'states should have the right to decide whether or not trade agreements are in the best interest of their citizens in areas such as procurement, investment and services that have always been under the purview of states and not the federal government.'"

While I appreciate that Hawaii may well not have paid "close attention to the impact free trade agreements would have on state policies" when NAFTA was signed, signed NAFTA was, and bound by NAFTA Hawaii is. And whether understood at the time, or no longer embraced today, NAFTA, in many, many ways, trumps states' rights. It has the same primacy in respect of legislative and regulatory desires of Canadian provinces. That's how international trade agreements offer opportunity and protections for those making cross-border investments.

This legislative session has seen Hawaii legislators unleash a blizzard of transient-accommodation bills. Some require off-Island owners of vacation rental properties to cede management and operation of their investment to realtors and condo rental agencies. At the same time others, like HB825 HD1 (and the deferred SB1237) aim to make operating a legal vacation rental so complex and dangerous that owners abandon the market, giving Hawaii hoteliers the accommodation monopoly they hoped Hawaii legislators would award.

There's nothing to protect consumers, or that offers balance, in Hawaii bills that nationalize private property, create a hotel monopoly, that try to stuff the Internet back into the rotary-dial age, or deny the primacy of NAFTA for Canadian cross-border investors in order to return to the age of economic and trade protectionism. Hawaii condo-rental agencies that can't compete in the digital age, and Hawaii hoteliers who see consumer preference for condos cutting into a market share they feel entitled to have simply drafted bills that would serve their special interests.

But these bills, as advanced by others, and in violating NAFTA and the commitment America made to uphold it and its principles, opportunities, and protections, serve only to portray Hawaii legislators as trade-deal and agreement welshers. I believe Members of the Committee and your legislative colleagues are better people than this.

For Canadian cross-border investors in legal Hawaii vacation-rental properties, and for Hawaii legislators who are bound to uphold the obligations, opportunities, and protections spelled out in NAFTA, the review by the Auditor and HCR48/HR22 that give rise to it do not obviate from the state and its current legislators the responsibility to abide by the commitment the state made in agreeing to be bound by NAFTA when it took force 21 years ago.

With kind regards,

Adam

brower1-Luke

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 02, 2015 10:10 AM
To: TOUtestimony
Cc: mhubner@halehubner.com
Subject: Submitted testimony for HR22 on Mar 4, 2015 10:35AM
Attachments: Annual_Park_Recreation_Visitation_Graph_(1904_-_Last_Calendar_Year).pdf

HR22
Submitted on: 3/2/2015
Testimony for TOU on Mar 4, 2015 10:35AM in Conference Room 312

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

Comments: Dear honorable Members of the Finance and Tourism Committees. I have reviewed HR22, and based upon my review, I must oppose this resolution. HR22 requests the auditor to conduct an analysis of the need for licensing and regulation of transient vacation rentals (TVRs) in the State of Hawaii. I do not disagree that there may be a problem on Oahu relating to TVRs operating outside of existing laws; however, this resolution incorrectly identifies that there is a proliferation of "mostly illegal" TVRs throughout the state. I own and operate a completely legal TVR on the Island of Hawaii, as do many others. I comply with the requirements of Act 326 and remit my GE and TA taxes to the State of Hawaii. This year I have become increasingly aware that legislation being put forward to address issues on Oahu are being presented as a panacea for problems that do not exist state-wide. I ask that members of the committees consider that there are many communities on the Big Island and other islands of the State that do not have large hotels to satisfy the needs of visitors wishing to stay in there. These visitors bring with them very important and necessary income for the communities and county. For instance, the attached visitor traffic report for Hawaii Volcanoes National Park shows that there has been a steady increase in visitor traffic for the last 5 years (1,693,005 visitors in 2014). Small communities, such as Volcano Village, do not have the means to host the volume of visitors wishing to stay in the vicinity of the park without the operation of TVRs. Even then, the majority of visitors must find lodging at alternate locations (hotels, condos, TVRs, etc.) either on the Hilo or Kona side. The measures being presented in a variety of bills this year do very little to increase enforcement of existing laws and create an atmosphere that will threaten future off-island investment and possibly eliminate TVRs in areas that need and support them. Aside from public comment periods, the bills have not been drafted with full stakeholder involvement, specifically legal tax-paying TVR owners and their representation (RBOAA). I would like to reiterate, that I do not specifically oppose the creation of a new license for TVR owners if it is done in an appropriate manner and will enhance enforcement of existing laws without being overly burdensome to the operators. I do take issue with the sources cited in this resolution and the inflammatory language they use to paint an inappropriately negative picture of TVRs state-wide when the problem appears to mostly be an Oahu-based one. Finally, I would like to point out that 2014 was difficult for many residents and small businesses, which include legal TVR owners, on the Big Island due to natural disasters. Two tropical storms and an ongoing lava flow have threatened or eliminated a number of TVRs and the businesses they support. Pursuing or enacting restrictive laws at a time when some of these communities are still recovering from or facing such burdens are making difficult matters worse. Mahalo for the opportunity to submit my testimony. Matt Hubner

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HCR48
Submitted on: 3/2/2015
Testimony for TOU on Mar 4, 2015 10:35AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Ada Eschen	Individual	Oppose	No

Comments: I OPPOSE this measure and support RBOAA's postion.

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brower1-Luke

From: mailinglist@capitol.hawaii.gov
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Subject: Submitted testimony for HR22 on Mar 4, 2015 10:35AM

HR22
Submitted on: 3/3/2015
Testimony for TOU on Mar 4, 2015 10:35AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
R Stewart	Individual	Oppose	No

Comments: Please Defer HB 825, HR22 and HCR 48 This bill was sponsored by the hotel organization. In their testimony they testified: "We support HB825 as it aims to create necessary requirements for legitimacy such as owner contact, local contact, license number, GET license number, TAT registration number, and it also requires the compliance with county ordinances regulating transient vacation rentals." I respectfully point out, ALL of these are ALREADY a requirement. HB825 is unnecessary. In the hotel organization's own words -- these conditions listed above bring the necessary requirements for legitimacy. Property owners who rent for less that 180 days must already comply with Hawaii Revised Statues 237, 467, 515 and 521. I am not performing the duties of someone requiring a Professional and Vocational Licensing. I am an individual property owner exercising my right to rent my property. That right is the same for long term or short term rentals -- all must comply with landlord tenant codes and pay taxes. Licensing is the most restrictive level of regulation. Per the Auditor's office "regulation is an exercise of the State's POLICE POWERS and should not be imposed or used lightly." Licensing must be to "protect the health, safety or welfare of the consumer." This bill seems to be requiring licensing to enforce behaviors on the operator - not as a consumer protection. The tax department already has authority for tax enforcement. The landlord tenant laws already protect the tenant (consumer). To compare the severity of what is proposed in HB825 please examine the requirements of the Condo Hotel operator - they are very minimal. HB825 however, treats us as if we are already convicted of a crime and now on parole with any future infraction resulting in the most extreme consequences. It places restrictions on our rights to manage and rent our own property. It imposes fines and punishments that are excessive. It violates search and seizure laws. It duplicates fines and punishments for infractions that other laws already address. Please retain Act 326. The state already has laws to address tax compliance and consumer protection under the landlord tenant laws. Please treat us as any other tax payer in the State and any other landlord in the state. Please take note of the stated purpose of the hotel organization's goal in sponsoring this bill is to bring about regulations that already exist. This bill is unnecessary and unduly severe.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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