



February 26, 2015

The Honorable Jill N. Tokuda, Chair  
415 South Beretania Street  
State Capitol, Room 211  
Honolulu, Hawaii 96813

RE: S. B. 519 SD1, RELATING TO TAXATION.

Aloha Chair Tokuda, Vice Chair Kouchi, 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 SB 519 SD1.

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 transient vacation rentals poses a serious challenge to the State and its communities, and that this challenge needs to be meaningfully addressed.

The definition of the "Local Contact" as described in Section 2 of ACT 326 as written is deficient, and is in direct conflict with the existing Statutes pertaining to the rental of residential properties in Hawaii, HRS 521 and HRS 467.

ACT 326 clearly identifies the Landlord Tenant Code's on-island agent requirement, specifically HRS 521-43(f), and cites that a core aspect of this ACT is to reinforce this on-island agent requirement in support of consumer protection and Hawaii Tax collection as stated in this ACT's Section 1.

Section 2 of ACT 326 then proceeds to rename the on-island agent of Section 1, and the Landlord Tenant Code, and refers to this individual as a "Local Contact" for the entirety of Section 2 of this Tax ACT.

**ACT 326's Section 2. wrongly states that the "Nothing in this section shall be deemed to create an employer- employee relationship" between the Local Contact and the operator. This statement within ACT 326 is in direct conflict with Statute, HRS 467 for an unlicensed person.** An unlicensed person performing the role of an on-island agent or "Local Contact" is acting as a "Caretaker or Custodian" as defined in the Real Estate Code, HRS 467-1, and exempted from Real Estate licensing per HRS 467-2(3). **A key requirement of this individual is that they are an employee of a single property owner, and that this person may provide this service for only one property owner.**

Illegal transient vacation rentals operators routinely cite their perceived "rights" to conduct off island rental activities in an illegal manner citing ACT 326, a TAT law, as their excuse to ignore and violate Hawaii's rental Statutes, the Landlord Tenant and Real Estate Codes. It is important from a Hawaii tax revenue collection perspective, as well as for consumer protection and public safety, to correct this defect in ACT 326 prior to this ACT becoming permanent.

While the Landlord Tenant Code requires an on-island agent to exist for off island rental owners, the nature and requirements of the person acting in this agent role are defined in the Real Estate Code, HRS 467.

We would suggest to the Committee the following language to correct this serious defect in the definition of the "Local Contact" within the present ACT 326:

*a) Local Contact - means any individual, who for compensation or valuable consideration, is employed as an employee by a single operator of the transient accommodation to provide services required by this section.*

*or*

*b) A Hawaii Real Estate Broker, a Hawaii Real Estate Salesperson under the direction of a Hawaii Real Estate Broker, or a Hawaii CHO.*

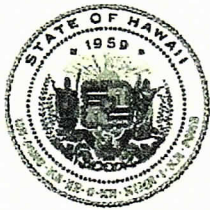
*\* Department of Taxation should have the right to require documentation they deem appropriate, unemployment insurance, temporary disability insurance, etc., from an operator to confirm employer requirements of (a) above are followed.*

Mahalo,

A handwritten signature in black ink, appearing to read 'Dan Monck', with a large, sweeping flourish extending to the right.

Dan Monck  
President  
Hawaii Association of Vacation Rental Managers  
[www.HAVRM.org](http://www.HAVRM.org)

## Real Estate Commission Bulletin



## contents

Off-Island "Agent"- Licensee or Non-licensee?	(1)
The Chair's Message	(2 - 3)
Act 326 Website	(3)
Administrative Actions	(4 - 8)
Statutory Rules/ Violations	(8 - 9)
Core B 2013 - 2014	(9)
Real Estate Branch Welcomes Two New Members	(9)
Interesting Numbers From The Commission	(10)
Prelicense Schools/ Continuing Education Providers	(11)
Real Estate Commission Meeting Schedule	(12)

[www.hawaii.gov/hirec](http://www.hawaii.gov/hirec)

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

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:

- Hawaii-licensed real estate broker or salesperson; or
- "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.



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

Testimony of George Szigeti  
President & CEO  
HAWAI'I LODGING & TOURISM ASSOCIATION  
Senate Committee on Ways and Means  
Hearing on February 26, 2015, 1:00 p.m.  
SB 519 S.D. 1 Relating to Taxation

Dear Chair Tokuda, Vice Chair Kouchi, and Members of the Committee. My name is George Szigeti and I am the President and CEO of the Hawai'i Lodging & Tourism Association.

The Hawai'i Lodging & Tourism Association (HLTA) is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms that benefit from and strengthen Hawai'i's visitor industry. Our membership includes over 150 lodging properties, representing over 50,000 rooms, and over 400 other Allied members. The visitor industry was responsible for generating \$14.9 billion in visitor spending in 2014 and supported 170,000 jobs statewide – we represent one of Hawai'i's largest industries and a critical sector of the economy.

On behalf of HLTA, permit me to offer this testimony regarding SB 519 S.D. 1 which makes Act 326, Session Laws of Hawaii 2012, permanent (original repeal date, December 31, 2015), and authorizes the department of taxation to enforce civil penalties for operators and plan managers who fail to conspicuously display the certificate of registration for transient accommodations.

The Hawai'i Lodging & Tourism Association **supports** Senate Bill 519 S.D. 1. Act 326, session laws of Hawai'i 2012, offers to create parity between the individually advertised vacation rentals and the rest of the lodging industry, by requiring businesses who furnish transient accommodations to register with the Department of Taxation (DoTAX) and display their registration number on advertisements. With advances in technology and the popularization of the "sharing community", Hawai'i has seen a growing capacity of advertised individual rental units by owner. As a State our total lodging inventory is comprised of approximately 25% of these individual rental units, the next step being further enforcing a level playing field with them.

Thank you for this opportunity to testify.

February 26, 2015

**The Honorable Jill N. Tokuda, Chair**  
Senate Committee on Ways and Means  
State Capitol, Room 211  
Honolulu, Hawaii 96813

**RE: S.B. 519, S.D.1, Relating to Taxation**

**HEARING: Thursday, February 26, 2015, at 1:00 p.m.**

Aloha Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its 8,400 members. HAR **offers comments** on S.B. 519 makes Act 326, SLH 2012 permanent and authorizes the Department of Taxation to enforce civil penalties for operators and plan managers who fail to conspicuously display the certificate of registration for transient accommodations.

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. The law was placed into Hawaii Revised Statutes (“HRS”) Chapter 237D, the transient accommodation tax section. 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.

***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.

**HAR notes that in order to ensure a thorough review and revision of the enforcement, tax collection and oversight of the vacation rental market, HAR respectfully requests that a section be inserted to create a task force with various interested parties and to come to a compromised solution to this convoluted issue.**

Mahalo for the opportunity to testify.

Dear Members of the Committee:

I support the positive amendments evidenced in SB519 SD1 and hope that you will support this bill. It builds upon the effort so many made in 2012 to create *Act 326*, and in so doing, supply a solution that upheld the provisions and protections of NAFTA, and the obligations parties have under the trade agreement.

The amendments evidenced in SB519 SD1 respect those broad-based efforts. Further, in making *Act 326* permanent, the amendments evidenced in SB519 SD1 send a message to all about compliance and the responsible development and clarification of penalties to ensure compliance is advanced.

I do wish to note my continuing and significant discomfort with the first two sentences of SB519 SD1, and wonder if legislators share this concern. The first two sentences of SB519 SD1 cite an online survey, and assert that the Hawaii legislature “finds” credence in it. I wonder if legislators are aware, however, that the survey’s sponsor, “*Business Pulse*” advises that, in reporting the results of the 428 participants, “This poll is not a scientific sampling. It offers a quick view of what readers are thinking.”

Point-and-click surveys like the one referenced in the opening two lines of SB519 SD1 are an uncontrolled survey of those who were compelled to vote. And ‘compelled’ is the key word, for such surveys — being uncontrolled and not at all scientific — are regularly subject to being flooded by interest groups. Such groups might even send emails to their members or allies encouraging their participation in such a survey in order to skew the results to their view.

Indeed, for this reason, it is anomalous — in my experience — to see such a survey cited in, or used to anchor, a piece of legislation being advanced by a legislature.

If, in the case of SB519, or SB519 SD1, Hawaii legislators were not inclined to add the word “unscientific” before the words “business pulse survey” in the first sentence, I wonder if they felt the first two lines should simply be struck. Left untouched, however, they are a marker for those who would see legislative action arise from unscientific and statistically invalid research and the dramatic and titillating results it can manufacture. If it creates even the appearance that legislative cause is founded upon it — as it does in SB519 and SB519 SD1 — it is a poor base, indeed, and would represent a development in today’s digital world of immediate social-media feedback that would make legislators’ duties even more complex.

There is much good to be said about interpreting and incorporating into the basis of, or cause for, legislative action the findings of statistically valid polls by reputable polling and research firms. The first two sentences in SB519 SD1 do not offer such an example.

Again, I do hope you will support SB519 SD1. And that you agree that the opening two lines, and the basis of their assertion, offer a poor precedent, and should find no home in any Hawaii legislation.

With kind regards,

Adam

**SB519**

Submitted on: 2/25/2015

Testimony for WAM on Feb 26, 2015 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Annette Lohman	Individual	Support	No

Comments: Honorable Committee Members -- Ways and Means Committee: Thank you for this opportunity to testify. I am an owner of a fully registered and tax-paying legal Transient Vacation Rental on the island of Maui. I purchased my condo in May of 2001. When I purchased, I was careful to only purchase a condo in the hotel zone for which my costs were higher. I have had to unfairly compete against illegal Transient Vacation Rentals which 1) are not in an area zoned for vacation rentals and/or 2) are in a legal zone but are not registered and do not pay the requisite taxes. SB51-SDI would make permanent Act 326 which addresses these issues. Hawaii is a special place. Tourism is its economic engine. To provide the services that its citizens and visitors expect, requires that everyone participates in the economy and all pay their fair share of taxes. I support this bill.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**SB519**

Submitted on: 2/25/2015

Testimony for WAM on Feb 26, 2015 13:00PM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cara Birkholz	Individual	Support	No

Comments: mahalo for the opportunity to provide testimony. Thank you to all for the hard work on this bill. I am Kihei resident and own several vacation rental properties. I support this bill in its current form SB519 SD1. Cara Birkholz 808-281-7934

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

Dear Senators,

Thank you for the opportunity to provide input and my support on this measure as currently written in S519 SD1.

I am an owner of a transient vacation rental on Maui and comply with all aspects of Act 326.

I appreciate the evaluations the TSI/CPN/JDL committees made and fully support the language as written in SB519 SD1.

Please vote to support this measure and make Act 326, Session Laws of Hawaii 2012, permanent.

Mahalo,

Elen Stoops

**SB519**

Submitted on: 2/24/2015

Testimony for WAM on Feb 26, 2015 13:00PM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joe Slabe	Individual	Support	No

Comments: I support this bill and am especially in favour of the removal of the sunset clause for Act 326. Mahalo for your time and for your service to the people of Hawaii!

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**SB519**

Submitted on: 2/24/2015

Testimony for WAM on Feb 26, 2015 13:00PM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kathleen Sheehan	Individual	Support	No

Comments: I support the language as written in SB519 SD1.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**SB519**

Submitted on: 2/24/2015

Testimony for WAM on Feb 26, 2015 13:00PM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kristin	Individual	Comments Only	No

Comments: Aloha Senators, I thank you for the opportunity to support this measure. I am an owner of a transient vacation rental on the island of Kauai in the Visitor Destination Area. I support this measure as it is currently written and especially the removal of the sunset clause on Act 326. Mahalo Kristin

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**SB519**

Submitted on: 2/24/2015

Testimony for WAM on Feb 26, 2015 13:00PM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Matthew Hubner	Individual	Support	No

Comments: Dear Senators, I thank you for the opportunity to provide written testimony regarding SB 519 SD1. I would like to briefly offer my support of this draft of the Bill. I appreciate the committees and their ultimate recommendation to strengthen and make permanent Act 326. I believe that owner-operated transient vacation rentals are an essential component to the Hawaiian economy, and I support any reasonable measures that achieve compliance for those acting outside of the law. SB 519 SD1 does just that. Mahalo. Matt Hubner

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**SB519**

Submitted on: 2/24/2015

Testimony for WAM on Feb 26, 2015 13:00PM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Neal Halstead	Individual	Support	No

Comments: Aloha. I, along with the rest of the leadership of the Hawaii Rentals by Owner Awareness Association, fully support this bill as amended. In particular, we fully support the elimination of the sunset clause on Act 326. Mahalo for your time, your consideration and most importantly, your service. Neal Halstead Vice President, RBOAA

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**SB519**

Submitted on: 2/25/2015

Testimony for WAM on Feb 26, 2015 13:00PM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
R Stewart	Individual	Support	No

Comments: I support the passage of SB519 in its current form. Please make Act 326 permanent.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**SB519**

Submitted on: 2/25/2015

Testimony for WAM on Feb 26, 2015 13:00PM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Teresa Parsons	Individual	Support	Yes

Comments: I stand in strong support of this Bill

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**SB519**

Submitted on: 2/24/2015

Testimony for WAM on Feb 26, 2015 13:00PM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Terry Gardiner	Individual	Support	No

Comments: I fully support this Bill and its' amendments. Mahalo for your consideration.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)