



DAVID Y. IGE
GOVERNOR

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LT. GOVERNOR

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

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE SENATE COMMITTEES ON
TOURISM AND INTERNATIONAL AFFAIRS,
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS, AND
COMMERCE AND CONSUMER PROTECTION

TWENTY-EIGHTH LEGISLATURE

Regular Session of 2015

Tuesday, February 17, 2015

9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 1237, RELATING TO TRANSIENT
ACCOMMODATIONS.**

TO THE HONORABLE GILBERT KAHELE, CHAIR,
TO THE HONORABLE WILL ESPERO, CHAIR,
TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND
AND MEMBERS OF THE COMMITTEES:

My name is Catherine Awakuni Colón, Director of the Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to submit testimony on Senate Bill No. 1237, Relating to Transient Accommodations.

The purpose of Senate Bill No. 1237 is to establish licensing requirements and enforcement provisions for transient vacation rentals under the Department. The Department offers the following comments on this bill.

Senate Bill No. 1237 would create a new chapter within the Hawaii Revised Statutes (“HRS”) to regulate owners of transient vacation rentals. The bill sets forth requirements for licensure powers of the Director, prohibited acts, and authorizes the Director to contract with qualified persons or delegate functions to the counties to enforce the new chapter. HRS § 26H-6 requires that new regulatory measures being considered for enactment be referred to the State Auditor for a sunrise analysis. Referral is required to be made by concurrent resolution that identifies a specific legislative bill to be analyzed. The statute further requires that the analysis shall set forth the probable effects of regulation, assess whether its enactment is consistent with the legislative policies of the Hawaii Regulatory Licensing Reform Act, and assess alternative forms of regulation. As such, the Department believes this bill should be deferred in accordance with the Hawaii Regulatory Licensing Reform Act until a sunrise analysis on this measure is conducted by the State Auditor.

The Department also recognizes 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 Senate Bill No. 1237 are an effective response to address issues relating to transient vacation rentals. HRS § 26H-2 provides, in part, that “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.” In addition, HRS § 26H-2 also provides for the policy that “[p]rofessional 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.” It is not clear that the State’s interest in setting up a licensing program for transient accommodations is of the same kind as other currently regulated trades and professions, nor is it clear that the risk to consumers in transient accommodation transactions rises to the same level as in the case of other regulated trades and professions. In fact, based on the popularity of these accommodations, it appears that consumers are not encountering the types of harm that would necessitate consumer protection regulation, and are instead relying on online reviews and comments to evaluate a particular location.

The Department notes that if DCCA licensure were mandated, the Department would necessarily ensure that the operator was in compliance with all applicable laws as a condition of licensure and before it provided the operator with state approval of the operation. This would mean that the Department would require an applicant to provide proof of the operator’s transient accommodations tax number, as well as proof of compliance with applicable zoning requirements. As such, this licensing proposal as drafted would place additional layers of cost and regulation on the law-abiding operators without meaningfully capturing noncompliant operations.

The Department is by no means an expert in the challenges that face the counties and the Department of Taxation in their enforcement efforts, but does note that in another context, technology has proved to be a cost-effective way of bringing disparate pieces of information together in a timely fashion for procurement qualification. Hawaii Compliance Express, for example, operates to assist businesses in providing compliance certificates by serving as an online repository of information from the Department of Taxation, the Department of Labor and Industrial Relations, the

Internal Revenue Service, and this Department. The Department suggests that in lieu of establishing licensure to provide a centralized source of information, consideration be given to use of a Hawaii Compliance Express type model instead.¹

Perhaps alternative approaches to resolve the oversight issues concerning transient vacation rentals, such as the approach taken in Senate Bill No. 519, Relating to Taxation, that requires the conspicuous posting of a transient accommodations tax certificate of registration number on all advertisements for transient accommodations and time share rentals, would provide consumers the opportunity to differentiate between compliant and non-compliant establishments, as well as provide the counties and the Department of Taxation with meaningful enforcement provisions. The Department also recognizes that a primary focus of this measure appears to be on providing greater support to the counties in ensuring compliance with county zoning requirements (see page 7, lines 4-13; page 10, lines 3-5; page 11, line 4 to page 13, line 19), the intent of which the Department supports and believes could be accomplished without the creation of a new state-level licensing program.

The Department also suggests that issues relating to sharing of currently protected taxpayer information be addressed in a manner that will assist both the counties and the Department of Taxation in reconciling their records and better aligning their enforcement efforts.

The Department acknowledges the Legislature's concerns and is committed to working with all parties and government agencies to identify appropriate solutions that

¹Hawaii Compliance Express can be found at the following webpage:
<https://vendors.ehawaii.gov/hce/splash/welcome.html#>

best address the permitting, tax, renting, and advertising issues related to transient vacation rentals in Hawaii.

Thank you for the opportunity to testify on Senate Bill No. 1237. I will be happy to answer any questions the members of the Committees may have.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

February 17, 2015

The Honorable Gilbert Kahele, Chair
and Members of the Committee on Tourism
and International Affairs
The Honorable Will Espero, Chair
and Members of the Committee on Public Safety,
Intergovernmental and Military Affairs
The Honorable Rosalyn H. Baker, Chair
and Members of the Committee on Commerce
and Consumer Protection
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Kahele, Espero, Baker, and Members:

SUBJECT: Senate Bill No. 1237
Relating to Transient Accommodation

Although the Department of Planning and Permitting (DPP) **supports the intent** of Senate Bill No. 1237, we have concerns due to inconsistencies in the Bill and the lack of clarity in the enforcement section of the Bill.

The Bill as written would establish under the Department of Commerce and Consumer Affairs (DCCA) licensing requirements and enforcement provisions for transient vacation rentals. We have no problem with DCCA regulating the commercial aspects of transient vacation rentals since the Bill provides that the DCCA licenses can only be issued after DCCA receives proof of compliance with county zoning. As such, the Bill does not supersede the county land use regulation. Further, we agree that there is a need for stronger regulation of vacation rental operations and that the civil fines assessed against those who blatantly violate the code should be at a level sufficient to deter the illegal use. However, those who operate illegal vacation rentals will in all likelihood not comply with the provisions of the Bill, nor seek to obtain the DCCA license knowing that they will not be able to obtain the required zoning clearance.

The Honorable Gilbert Kahele, Chair
and Members of the Committee on Tourism
and International Affairs

The Honorable Will Espero, Chair
and Members of the Committee on Public Safety,
Intergovernmental and Military Affairs

The Honorable Rosalyn H. Baker, Chair
and Consumer Protection

Hawaii State Senate

Re: Senate Bill No. 1237

February 17, 2015

Page 2

Secondly, we are concerned that there are redundant processing requirements levied on those who would obtain a DCCA license in addition to the City permit processing requirement to conduct the use. Specifically, the Land Use Ordinance (LUO) states that although short-term vacation rental operations (less than 30-days) are a permitted use in the Resort District and the Resort Mixed Use Precinct of Waikiki, the use is prohibited in all other zoning districts/precincts, unless a Nonconforming Use Certificate (NUC) is issued to the operator by the DPP. This certificate is renewed biannually at a cost of \$400 per renewal. Our concern is that if DCCA would issue a license to an operator of a transient vacation rental operation and require the license to be renewed annually and be assessed a renewal fee, this, combined with the City's permit renewal requirement, would impose duplicate processing requirements on the applicant and would be an unfair assessment.

Finally, the Bill contains definitions that are inconsistent and contrary to definitions used by the City's LUO for similar terms. The discrepancies are as follows:

1. The definition "bed and breakfast establishment" or "bed and breakfast home" means a single-family dwelling occupied by an owner or a guest house for rental in consideration for less than 30 days. The reference to a guest house is conflicting with the LUO definition of "bed and breakfast home," which means a use in which overnight accommodations are provided to guests for compensation for periods less than 30 days, in the same detached dwelling as that occupied by an owner, lessee, operator, or proprietor of the detached dwelling. To be consistent with the LUO, the bed and breakfast use cannot be conducted separately from a guest house.
2. The definition "Dwelling" means...(3) a bed and breakfast establishment or bed and breakfast home. According to the LUO, the bed and breakfast home is conducted from the same detached dwelling as that occupied by an owner, operator, or proprietor of the detached dwelling. The bed and breakfast home is accessory to the principle use and cannot be a stand alone dwelling.

The Honorable Gilbert Kahele, Chair
and Members of the Committee on Tourism
and International Affairs
The Honorable Will Espero, Chair
and Members of the Committee on Public Safety,
Intergovernmental and Military Affairs
The Honorable Rosalyn H. Baker, Chair
and Consumer Protection
Hawaii State Senate
Re: Senate Bill No. 1237
February 17, 2015
Page 3

3. The penalty provisions of the Bill are unclear and should be clarified to distinguish between the \$10,000 civil penalty for each separate offense and the subsequent provision that the owner is subject to a fine of \$2,000 for each separate offense. It is also suggested that DCCA, and not the counties, will enforce the DCCA license and trust account requirements, as the City inspectors do not have a working knowledge of these matters. The City will shortly be introducing to the City Council legislation that will establish a similar civil fine structure as the \$10,000 provision proposed in this Bill.
4. The definition "Transient" means any person who rents or uses a transient vacation rental for compensation or fees for less than thirty days. Although this is consistent with the definition provided in the LUO, it is inconsistent with the definition provided in Section 2, paragraph 2 of the proposed Bill that states: "Transient accommodation" 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....".

In summary, the City and County of Honolulu is willing to participate in any discussions that would address the concerns expressed in our testimony. Thank you for this opportunity to testify on Senate Bill No. 1237.

Very truly yours,

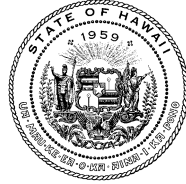
A handwritten signature in blue ink that reads "George I. Atta". The signature is fluid and cursive, with the first name "George" and last name "Atta" clearly legible.

George I. Atta, FAICP
Director

GIA:fmt
SB1237-TransientAccommodations-mf

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION

P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
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To: The Honorable Gilbert Kahele, Chair
and Members of the Senate Committee on Tourism and International Affairs

The Honorable Will Espero, Chair
and Members of the Senate Committee on Public Safety, Intergovernmental and
Military Affairs

The Honorable Rosalyn H. Baker, Chair
and Members of the Senate Committee on Commerce and Consumer Protection

Date: Tuesday, February 17, 2015
Time: 9:00 A.M.
Place: Conference Room 229, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 1237, Relating to Transient Accommodations

The Department of Taxation (Department) supports S.B. 1237 and offers the following comments.

S.B. 1237 creates a new chapter designed to regulate transient vacation rentals and places enforcement authority under the Department of Commerce and Consumer Affairs (DCCA). S.B. 1237 also makes complementary amendments to the Tax Law.

The definition "transient vacation rental" in Section 1 states that the rental is for less than 30 days. However, under chapter 237D, Hawaii Revised Statutes (HRS), Transient Accommodations Tax generally applies to rental income received for furnishing accommodations for less than 180 days. The Department believes that the definition of "transient accommodations" in chapter 237D, HRS, is very broad and enforceable. In order to avoid taxpayer confusion and any unintended tax law implications, the Department recommends that the definition of "transient vacation rental" be amended as follows:

"Transient vacation rental" means a dwelling or lodging located in the State let by an owner, operator, or lessee for compensation or fees,

including club fees, for less than [~~thirty~~] one hundred and eighty days or less per rental. Transient vacation rental does not include any facility owned or used by a government agency or a tenement home, group home, group residence, group living arrangement, boarding house, or rooming house certified pursuant to section 445-94.

The Department supports this measure because it believes the measure effectively addresses longstanding concerns of both the Legislature and community that the State is home to many unlawful transient vacation rentals. The Department is eager to partner with DCCA and the respective counties to ensure that transient vacation rental operators are paying their general excise and transient accommodation taxes.

In particular, the Department supports the DCCA being the lead agency in regulating the transient vacation rental industry, as it is better suited to regulate the business operations of the short-term rental industry. Ensuring that operators are compliant with land use laws, rental of real property and other consumer protection laws, will help identify the taxpayer responsible for the transient rental and assist the Department in enforcing its tax compliance duties.

The Department notes that previously enacted and proposed legislation has identified the Department of Taxation as the lead agency in regulating the transient vacation rental industry. For instance, Act 326, Session Laws of Hawaii 2012, placed the Department in charge of maintaining a database of transient rental operators in condominium or homeowners associations; other legislation proposed for this session would place the Department in charge of other databases intended to help regulate the industry. While the Department is willing to enforce compliance of the applicable tax laws, the Department is unable to address many of the non-tax issues arising from short-term rental operations.

Lastly, the Department requests the bill be amended to include a new section that makes a related technical, housekeeping amendment:

SECTION . Section 237D-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director of taxation shall administer and enforce this chapter. In respect of:

- (1) The examinations of books and records and of taxpayers and other persons,

- (2) Procedure and powers upon failure or refusal by a taxpayer to make a return or proper return, and
- (3) The general administration of this chapter, the director of taxation shall have all rights and powers conferred by chapter 237 with respect to taxes thereby or thereunder imposed; and, without restriction upon these rights and powers, sections 237-8 and 237-36 to [~~237-41~~] 237-41.5 are made applicable to and with respect to the taxes, taxpayers, tax officers, and other persons, and the matters and things affected or covered by this chapter, insofar as not inconsistent with this chapter, in the same manner, as nearly as may be, as in similar cases covered by chapter 237."

Thank you for the opportunity to provide comments.



HAWAI'I LODGING & TOURISM
ASSOCIATION

Testimony of George Szigeti
President & CEO
HAWAI'I LODGING & TOURISM ASSOCIATION
Committees on TSI/PSM/CPN
Hearing on February 17, 2015, 9:00 A.M.
SB1237 Relating to Transient Accommodations

Dear Chairs, Vice Chairs, and Members of the Committees. 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 Senate Bill 1237 relating to transient accommodations, which tasks the Department of Commerce and Consumer Affairs with the licensing and enforcement of transient vacation rentals.

The Hawai'i Lodging & Tourism Association **supports the intent** of this measure, because it will help to create parity between the individually advertised vacation rentals and the rest of the lodging industry, by giving licensing and enforcement authority to the DCCA. 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, most of which we currently have no means of enforcing a level playing field with. We support SB1237 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. Also, the requirement to establish a client trust account and the enforcement of the law under these guidelines will bring about a better experience for both neighbors of these transient vacation rentals and visitors alike.

Thank you for this opportunity to testify.



Maui Hotel & Lodging
ASSOCIATION

Testimony of
Lisa H. Paulson
Executive Director
Maui Hotel & Lodging Association
on
SB 1237
Relating To Transient Accommodations

COMMITTEE ON TOURISM AND INTERNATIONAL AFFAIRS
COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Tuesday, February 17, 2015, 9:00am
Conference Room 229

Dear Chairs Kahele, Espero, Baker; Vice Chairs English, Taniguchi and Members of the Committees,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes over 150 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA’s membership employs over 20,000 local residents and represents over 19,000 rooms. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA **supports** SB 1237 that proscribes licensing requirements and enforcement provisions for transient vacation rentals under the department of commerce and consumer affairs.

MHLA **supports** this measure, because it amends the definitions of “transient accommodations” and further defines “licensing; requirements, renewals”; “transient vacation rentals; requirements”; “enforcement; inspections” and “penalty.” This will help the State and counties better manage the overall enforcement of transient accommodations tax on transient vacation rentals, which will help reduce the tax burden on local residents. With advances in technology and the popularization of the “sharing community” Hawai’i has witnessed a growing number of vacation rentals by owners (VRBO’s), most of which are not operating within a legal capacity. By allowing the Department of Commerce and Consumer Affairs to create a comprehensive database of transient accommodations through a registration process and enforcement of penalties for noncompliance, this measure is an important step in regulating and bringing fair equity to all accommodation options within the State of Hawaii.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: mail@exclusivegetaways.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 9:38:15 AM
Attachments: [2015-02-16 \(1\).pdf](#)

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Dan Monck	Hawaii Association of Vacation Rental Managers	Oppose	Yes

Comments:

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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To: [TSI Testimony](#)
Cc: info@rboaa.org
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 6:50:12 AM
Attachments: [SB 1237 testimony 2-15-15 final.doc](#)

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Alicia Humiston	Rental By Owner Awareness Association	Oppose	Yes

Comments:

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Cc: honolulub@aol.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 1:48:23 PM

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Bob Cook	Captain Cook Real Estate	Oppose	No

Comments: Having been a licensed Realtor in the state for nearly 40 years I strongly oppose any plan to remove the need for a real estate license to manage ANY property in the state, regardless of the term of the rental. Our current system works well when properly enforced. Enforcement is the issue here not the licensing status of the manager, if any.

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Kona Coast
VACATIONS

To Whom It May Concern,

Please accept this testimony in opposition to SB1237.

Real Estate licensed Vacation Rental Managers are one Hawaii's best State tax collection systems. These licensed Vacation Rental managers ensure that the GE and TA taxes are accounted for and submitted. For the past 9 years of business we have ensured that our managed property owners charge, collect and submit their appropriate taxes on time. The competitive Real Estate governed Vacation Rental industry ensures guest and owner satisfaction while ensuring the high standards of real estate transactions are met. This provides clear and concise agreements, proper use of trust accounts and accounting for both guests and owners.

We have run into many individual owners, on island contacts and other non-regulated providers that bypass the tax system by operating without written contracts and agreements. Money travels directly off island to owners, who then contract individuals and service companies to manage their homes via cash or cash equivalent payments. They then allow their "friends" to stay at their homes.

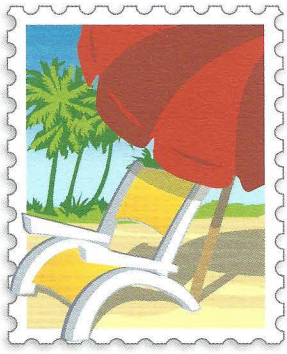
If you take away the licensing requirements you will have no possible way of auditing these varied and many management entities. It is our belief that many self-managed vacation rentals will still bypass the system by not reporting or reporting portions of the rental income. If you have no regulating body, how easy is it to provide discounts to returning guests for paying the owner directly using cash. Other examples are service companies' charging for one service such as landscaping or home checks (subject to GE) then providing taxable management services for vacation rentals that are subject to TA and GE (a loss of 9.25%) which will continue to evade the tax system.

Licensed Vacation Rental companies are a major tax revenue generator, collector and an employer in Hawaii. The professionally managed Vacation Rental component of Hawaii Accommodations can be a positive force in bringing travelers and their expenditures to the islands year after year, or if not operated professionally, Vacation Rentals have the potential of being very detrimental to the Islands.

We have been in the short term or vacation rental business for over nine years growing from 4 (four) employees to 14 (fourteen). We have seen guests being scammed with properties falsely advertised, property owners being scammed by guests, vacation rental companies scamming property owners and the most blatant has been the off island management of homes to sidestep the payment of taxes. This past week, a guest called asking for a referral to lawyer, he wanted to sue a person who falsely advertised a property for rent. The individual who misrepresented the property has sullied the Vacation Rental industry, and the Hawaii travel industry. Why share this information, the State should want this to



www.KonaCoastVacations.com



be an industry that is able to be reviewed and audited. Realtors have a standard in which to adhere, including the use and management of trust accounts. The threat of losing their Broker's license provides the self-policing incentives to operate honestly and with integrity. Having a third party such as a Broker manage the funds ensures more fair treatment of guests and owners. How secure is the guest's future money if the funds are placed in a trust account managed by the individuals owning the property.

Placing a high standard on the Vacation Rental Industry will ensure the Islands are represented in a positive way. We look forward to a time when all vacation rentals are collecting and submitting their taxes and being operated in a

professional manner.

Aloha,

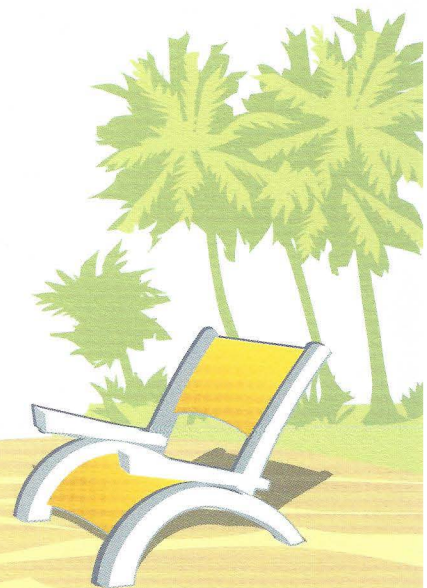
Ted Klassen MBA

Partner -Kona Coast Vacations

Kona Coast Property Management dba Kona Coast Vacations

74-5565 Luhia Street, #101

Kailua Kona, HI 96740



From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: adaeschen@yahoo.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 5:49:10 AM

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

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

Comments: I oppose this bill and support RBOAA's position on this matter.

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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Dear Members of the Committee:

Thank you for the opportunity to offer testimony on SB1237. I oppose this bill in its current form, and urge you to do the same.

It must be as hard for Hawaii hoteliers as it is for any business when consumer preferences change, and people prefer less and less the product you offer. Ask the makers of rotary-dial phones. Cassette tapes. VCRs. Fax machines. Times change; we may not like the change — ask ABC, NBC, and CBS how they feel about HBO and cable — but clever people, companies and industries learn to adapt to changing preferences. They employ innovation and embrace adaptation to find a new niche amidst the new consumer preferences. The less admirable people, the ones who aren't nimble, the dangerous companies and industries? Rather than compete and move forward, they look for ways to set back the hands of progress.

And they cause irreparable damage in the effort.

Canadians have always been good to Hawaii, making huge short- and long-term investments in the state. The Hawaii Tourism Authority reports that for 2013, Canadians accounted for almost 10% of state visitors, and pumped \$1.1 billion into the economy. Many of the 500,000 Canadians who visited Hawaii like staying in condos, whose popularity with Canadians has been rising at the expense of their preference for staying in hotels. And as different as Canadians and Americans may be, this same Hawaii Tourism Authority report shows that in accommodation preference in Hawaii for condos over hotels, we're the same: Americans from the other 49 states, just like Canadians, are embracing accommodation choice, and increasingly choosing accommodation other than hotels when choosing to visit Hawaii.

Coldwell Banker reports that Canadians were the top foreign buyers of Hawaii properties in 2013, purchasing \$244.6 million worth of property. Canadians have been investing in Hawaii real estate for decades, and this cumulative Canadian cross-border investment in just this one US state is in the billions.

Many of the Canadians who have invested in Hawaii have done so through the opportunities and protections for cross-border investment the North American Free Trade Agreement (NAFTA) created when it came into force in 1994. But these Hawaii bills ignore NAFTA and Canadians' protections under it. Indeed, SB1237 establishes such new, onerous, and both specific and unclear requirements for cross-border investors that one is left to wonder if bill drafters were even aware of the state's obligations under NAFTA when they advanced this and similarly festering bills to Hawaii legislators.

Part Five of NAFTA (Investment, Services, and Related Matters), at Chapter 11 ("Investment") sets out the behaviours each party (which, in this case, means the US and Canada and their respective states and provinces) agreed to extend to each other in signing NAFTA. Hawaii is bound by the requirements of, and protections offered by, NAFTA.

While it may have been the case that among all parties to NAFTA there were, at the

time of signing, laws and regulations on the books that pre-dated NAFTA, agreeing to NAFTA meant agreement to removal of most barriers to trade and investment. Moreover, when NAFTA was created, all parties were able to identify and agree upon exceptions to NAFTA in areas of trade, commerce, and regulation where NAFTA provisions would not apply. In NAFTA, at neither Chapter 21 ("Exceptions") or at Annexes ("Reservations") is found any language that would exclude Hawaii from either offering or benefitting from the full protections and benefits of NAFTA.

In its current form, SB1237 fails several NAFTA tests. And further to the point above, it would indeed appear that drafters and proponents of SB1237 have taken inadequate care to ensure that legislators who introduced the bill, and those who may consider it, have been apprised of their role in upholding these NAFTA provisions and protections. It appears that Hawaii legislators have been grossly misled by the bill's drafters. Perhaps it's just an oversight by the drafters, a simple mistake. Well, whether intentional or accidental, per their own legislative proposals elsewhere this session, it's unforgivable, one that would see them, per HB968, unable to defend themselves, and through SB201, guilty of a Class C felony and facing up to five years in prison, and a fine of up to \$10,000.

In the effort to aid understanding of consideration of SB1237, the NAFTA section of singular import is, as noted above, Chapter 11, which commits Hawaii to uphold NAFTA commitments. On the strong likelihood that the bill drafters did not provide Hawaii legislators with accompanying briefing materials on the NAFTA protections and provisions Hawaii is bound to uphold, the key ones that apply to SB1237 are provided at the close of my testimony, below.

Against the backdrop of the standard of "Performance Requirements" Hawaii is required to uphold under NAFTA, a read of SB1237 sees it fail the NAFTA test on the most primary of grounds, i.e., that SB1237 is "[A] disguised restriction on international trade or investment." One example of this is offered by the language in SB1237 specifying where and how owners of transient accommodations must do their banking, i.e., requiring trust accounts and requiring their location in Hawaii banks. This type of requirement is a 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."

Another example is offered by the treatment afforded by SB1237 of annual licensing. Under SB1237, any number of unknown variables may preclude annual licensing of a transient vacation rental, significantly jeopardizing investors' investment in the United States. As NAFTA makes clear, in a lengthy section, excerpted here, "No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party" This is a particularly applicable example when one considers, which one must, the condition placed upon the licensing SB1237 purports to advance by HB198 and the like.

To reiterate, Canadians have been good to Hawaii, accounting for almost 10% of state visitors in 2013. Those 517,000 Canadians pumped \$1.1 billion into the Hawaii economy. And many of the 517,000 Canadians who visited Hawaii like staying in

condos, whose popularity with Canadians choosing to visit Hawaii has been rising at the expense of their preference for staying in Hawaii hotels. And while they are making short-term investments in Hawaii's tourism export, Canadians are making long-term investments in Hawaii, too, and in 2013, bought \$244.6 million worth of property. Canadians' cumulative cross-border investment in Hawaii is in the billions.

First, it is unlikely that those who drafted this bill believe that Canadians with property investments in Hawaii require notification that, under SB1237 and other bills making their way through the legislature, their current Hawaii property investments are at risk.

Second, it is unlikely that those who drafted this bill believe that Canadians considering making property investments in Hawaii require notification that this and other bills like it, in their current forms, make future investment in Hawaii a dubious action in an unstable jurisdiction.

Third, it is unlikely that those who drafted this bill have considered if Canadians might continue to visit Hawaii if it were understood that Hawaii legislators had nationalized the real property investments in the state by Canadians by forcing them to cede control of their management and operation to others chosen by the state.

And fourth, it is unlikely that those who drafted this bill have considered that Hawaii legislators, by acceding to the wishes of hoteliers to end consumer choice in accommodation options in Hawaii, will eliminate a preferred accommodation choice favoured by Canadians, thereby making Hawaii a disadvantaged cousin to the competitive and robust US and international Canadian-friendly sun destinations that offer an array of accommodation choice that Canadians seek.

As those who have drafted this bill have failed in each of the above four points, it falls to those who support competition and the consumer choice it makes available — and the level of consumer protection that comes with choice — to warn Canadians that Hawaii is turning its back on them in favour of creating a hotel monopoly in accommodation, and will nationalize their property investments in Hawaii in order to do so.

It is as true in Hawaii as it is anywhere in the world: The Digital Age has changed us all. It has brought opportunity, and it has brought challenge. That's the way of innovation. But so far, those in Hawaii unable or unwilling to adapt and compete in the Digital Age — hoteliers and condo rental agencies particularly — have simply turned to state legislators for an easy-button solution.

They've proposed bills that will force investors in Hawaii to cede control and management of their investment properties to state-sanctioned third parties, namely themselves.

They have proposed legislation so confusing and complex, with penalties so high for any unintentional error in compliance, and have stripped legal rights to defence for such circumstances that such bills will surely cause some operators of legal transient accommodations to vacate the marketplace in search of more reliable and stable

investment climates in other states or countries, thereby creating a hotel monopoly that such bill proponents seek.

And most egregious, they are putting bills in front of Hawaii legislators who, if they accede to their content, will demonstrate that Hawaii's word as signatory to the foundations of our society — be they constitutions, trade agreements or contracts — cannot be relied upon.

It is a dismal and sad finding, but one that is inescapable nonetheless: When one considers the affront to all offered by those who drafted and advanced SB1237, it is clear that not all America's enemies reside abroad.

SB1237 is certainly about licensing, but not as its drafters would have us believe. SB1237 gives license to those who seek to gain by deceit, contrivance, and manipulation. It should generate your opposition for its craven and dishonourable effort to use your role as legislators to tilt the vibrant — and yes, naturally competitive and ever-evolving — Hawaii accommodation landscape into state-created monopoly.

And make no mistake, the claims by the drafters and pushers of SB1237 that it will “level the playing field” are as self-serving as they are reprehensible. Unable to compete with the emerging preferences of US and international tourists (as the Hawaii Tourism Authority report makes clear), they advance monopoly and nationalization of private property as solutions for their inadequacy. Too timid to name their solutions for what they really are, they dust off the old chestnut of claiming they are trying to “level the playing field.” And in so doing, they hope that Hawaii legislators will be unable to spot the difference, and their vulpine temerity in trying to saddle said legislators with the consequences and fallout.

Bill SB1237 deserves our collective scorn for the betrayal it represents of a commitment we make to constitutions, trade agreements, and the grand and noble principles upon which they are built.

It cannot go unmentioned in all this that the Hawaii Rental By Owner Awareness Association (RBOAA) was not consulted on the intent or content of this bill, despite several years of active and supportive efforts with Hawaii to encourage legal transient accommodations operations. And that's an oversight that justly imbues SB1237 with a cloak of the furtive, and the smell of the desperate. And that is, indeed, a failure in open and transparent consultation, one that should make Hawaii legislators further question if those who drafted HB1237 — and others like it — and are placing such bills before them are playing them for rubes; a pack of fools. Such a lack of consultation legitimizes the peril inherent in any embracement of SB1237, and bills like it: That they are nothing more than special-interest-driven measures whose authors care not a whit that, in adopting them, Hawaii legislators will fall offside with the same NAFTA provisions and protections that benefit and protect Hawaii investors in NAFTA partners, and that benefit and protect NAFTA partners' investments in Hawaii.

I hope that in considering SB1237 and other bills like it from such backward-looking sources, that you, your committee colleagues, and all Hawaii legislators will continue to bring balance, clarity, and NAFTA conformity to all matters legislative, and will work

to reject or amend such legislative proposals until they embrace and uphold these important standards. I hope, too, that you, your committee colleagues, and all Hawaii legislators will stand against those who smugly believe your role is to create monopolies that line their pockets, and facilitate state nationalization of investment to third parties for the same shabby and contemptible purpose.

Please oppose SB1237 and all bills like it that so thoroughly discredit Hawaii as a tourism destination and stable location for investment. And in doing, send a message to the external drafters of such bills that while they may treat the Hawaii Legislature as the grubbiest little house on a block owned solely by them, it is, in fact, like all great and effective legislatures — a House where balance, fairness, honouring one's word, and upholding agreements continue to be the foundations of strength, trust, and the progress and goodwill that result.

With kind regards,

Adam

NAFTA Article 1102: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to 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.
3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.
4. For greater certainty, no Party may:
 - (a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or
 - (b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

Article 1103: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 1104: Standard of Treatment

Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103.

Article 1105: Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.
2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

Article 1106: Performance Requirements

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:
 - (a) to export a given level or percentage of goods or services;
 - (b) to achieve a given level or percentage of domestic content;
 - (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
 - (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
 - (e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
 - (f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or
 - (g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.
2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 1102 and 1103 apply to the measure.
3. No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:
 - (a) to achieve a given level or percentage of domestic content;
 - (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or provides y to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.

6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(b) necessary to protect human, animal or plant life or health; or

(c) necessary for the conservation of living or non-living exhaustible natural resources.

From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: a.wilson@jwr.ca
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 10:24:05 AM

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Wilson	Individual	Oppose	No

Comments: As a transient rental property owner, I am writing in opposition of the proposed HB825/SB1237 legislation which calls for the licensing of all transient rental properties in the state. The bill would create onerous and needless license application and filing requirements for tens of thousands of owners which would have to be handle at considerable cost by the state. The bill does not state how much a license will cost nor on what grounds it will be granted or denied.

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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: annettelohman@earthlink.net
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 12:52:45 AM

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

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

Comments: February 16, 2015 Honourable Gilbert Kahele, Chair, and Members of the Senate Committee on Tourism and International Affairs. Mahalo for the opportunity to testify. I oppose SB1237 I oppose this bill and am in full agreement with the position of RBOAA. I am particularly concerned about the requirement for self-managed TVR owners to maintain bank trust accounts. The nature of our business is such that we are not holding funds on behalf of other parties nor must we keep such funds separate from our own business. Once a guest pays for the rental, the funds belong to the owner. This change makes this bill consistent with the landlord tenant code. Our business funds are used regularly to pay for Homeowner's Associations fees, utilities, security/damage deposit refunds (usually small amounts of a couple hundred dollars), taxes (T.A., G.E., Property, and Income). Unlike the security deposits that are held for long-term rentals which tend to be large sums that are held for years, our security/damage deposits are only held a short time until we determine that no damage save normal wear and tear is done. Then we return them. The use of trust funds would be inappropriate and cumbersome to our kind of business and serves no legitimate purpose. Mahalo for your consideration and the opportunity to provide testimony.

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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: barry_cohn@hotmail.com
Subject: *Submitted testimony for SB1237 on Feb 17, 2015 09:00AM*
Date: Monday, February 16, 2015 6:21:13 AM

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Barry Cohn	Individual	Support	No

Comments:

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Dear Legislators,

My name is Bonnie Aitken and I own a TVR on Kauai. I am in **STRONG OPPOSITION** to SB1237. I do not understand the draconian measures you are suggesting be enacted into law that I must now follow or lose my ability to self-manage my TVR. The way this bill reads, it seems like the state assumes all TVR owner-operators are illegal or tax cheats and must be audited within 3 days and inspected at the whim of a governmental employee. I find this bill extremely offensive. I am losing my interest in doing business in the state of Hawaii. I do contribute a significant tax to the economy but I am seriously considering moving away from this state. Why stay in a state that does not want you to do business there?

I do not know why you need any more documents proving I have a legitimate business. I have a TAT and GET license. I have a county permit showing I am within the zoned area for a TVR. The tax department has all this information already. My property taxes reflect that I am in a TVR approved area and I am already paying a higher property tax because of that. The tax department already knows who I am. Furthermore, I am registered with the state and the state sends me my GET & TAT forms to fill out. I fill out a TAT form monthly, a GET form quarterly, and a yearly form to catch any errors I may have made. These forms are already filed with the tax department. You already have the means to verify my tax status. Why are you attempting to add another layer of duplicitous bureaucracy when you already have the means to obtain the necessary information? Save some tax dollars please!

Why are you insisting a self-managing owner establish a client trust account? In my contracts, the guest (client) owes me rent a certain number of days prior to their stay. Up until then, they may cancel their contract and owe nothing. I only collect rent when it is due and it becomes non-refundable as per the contract. I have given money back if people cancel but it is with my discretion and as I don't want a bad review on the website, I have always returned the rent when asked. I want happy guests! What purpose would a client trust account serve? Money isn't collected until it is due by the contract they signed. It is stated in my contract that should the condo become uninhabitable, I will refund their money and find an alternative place for them to stay. I propose you eliminate the bank trust account as it serves no purpose for a self-managed condo rental with the owner handling all the financial transactions. As SB1237 is now worded, unless I establish a client trust account, I am not allowed to do business in Hawaii.

I maintain my books but sometimes I go on vacation and would not be home to turn over my books for inspection and an audit within 3 days or face stiff fines. You are acting as a police state. This bill also demands that my property can be entered and inspected, at my expense, by any employee or member of the zoning department upon written notification to confirm I am following the laws. Will my guests be interrupted by an inspector during their stay? Please eliminate this aspect of SB1237.

As for my local contact being available 24-7, I recommend you delete this provision. Reasonable hours I can expect but 24-7 is not reasonable. I have posted in my condo several other individuals to contact in case of a true emergency such as medical, plumbing or wiring issues that need attention immediately. Show me a real estate agent that conforms to the 24-7 requirement.

The powers you are giving to the" Director "need to be more limited. The director can issue a "fee" but it is not stated what the fee will be. The director does not seem accountable to anyone and can cause harm to a small business at their whim.

To sum up, I do not support any part of this bill and suggest you scrap the entire bill as it is poorly thought out.

Thank you for the opportunity to voice my opposition to SB1237.

From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: boydready@hawaii.rr.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Tuesday, February 17, 2015 2:10:38 AM

SB1237

Submitted on: 2/17/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Boyd Ready	Individual	Support	No

Comments: Dear Senators: Please approve this measure. The State is losing tens of millions in taxes, neighborhoods are being mis-priced for commercial uses while residential tax rates are enjoyed by the businesses, and lack of appropriate tracking, license transparency, and ability to enforce has hampered County and State government in appropriately regulating. This is a good measure and deserves support.

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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: brandon_in_seattle@mac.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 8:35:42 AM
Attachments: [SB1237.docx](#)

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Brandon Mullenberg	Individual	Oppose	No

Comments:

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From: [Brian](#)
To: [TSI Testimony](#)
Cc: [Brian](#)
Subject: Opposition to HB825 and SB1237
Date: Monday, February 16, 2015 9:02:36 AM

Dear Legislators: I am writing to voice my strong opposition to HB825 and SB1237.

HB825 and SB1237 appear to be measures that are thinly veiled attempts to punish out-of-state owners of legal vacation rentals in order benefit the existing hotel industry. Requiring out-of-state owners to hire a licensed real estate agent to manage their properties will only increase the operating costs to owners who already operate legal rentals and who already comply with Hawaii's tax laws. Owners who do not currently comply with the existing laws will certainly not register and hire an expensive real estate agent. If anything, requiring out-of-state owners to forfeit a substantial portion of the income from their rentals will likely increase the number of owners who decide to NOT comply with the new real estate agent rule and who will not therefore pay Hawaii taxes.

There are better ways to address the problem of people who operate illegal vacation rentals, or out-of-state owners who do not pay their GET and TAT taxes. Requiring all out-of-state owners to pay the high fees usually charged by real estate agents is an unfair penalty on such owners with no associated benefit to the state of Hawaii. The only beneficiaries are those who wish to make owner-managed legal vacation rentals less profitable, and - therefore - less of a competitive threat to the hotel industry. In addition, the powerful real estate agents will also profit handsomely from this measure, at the expense of small owner-operators.

More active enforcement of existing laws to require owners of illegal rentals to comply with such existing laws is a much better way to increase the tax flow to the state. Such active enforcement will also help reduce the number of illegal rentals who unfairly compete with the hotel industry. But, please do not punish out-of-state owners by requiring that they hire an expensive real estate agent to manage properties which many of us already manage effectively with our existing on-island staff.

Thank you.

Sincerely,

Brian Roskam

9270 Sierra Mar Drive 2230 S. Kihei Road #2

Los Angeles, Ca 90069 Kihei, Maui, HI 96753

From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: carabirk@gmail.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Sunday, February 15, 2015 3:59:28 PM

SB1237

Submitted on: 2/15/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

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

Comments: I am a Hawaii resident, living in Kihei where I self-manage my four vacation rentals. I am a member of the Hawaii RBOAA (Rental by Owner Awareness Association) and ask you to please consider their recommendations on this bill. Mahalo for the opportunity to testify. Cara Birkholz 808-281-7934

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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: carlhu@hufamily.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Sunday, February 15, 2015 2:07:12 PM

SB1237

Submitted on: 2/15/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Carl Hu	Individual	Comments Only	No

Comments: As a transient rental property owner, I am writing in opposition of the proposed HB825/SB1237 legislation which calls for the licensing of all transient rental properties in the state. The bill would create onerous and needless license application and filing requirements for tens of thousands of owners which would have to be handle at considerable cost by the state. The bill does not state how much a license will cost nor on what grounds it will be granted or denied. It is also unclear whether hotel operators would be required to obtain a license for every room. The fine of \$10,000 is also extremely excessive and exceeds most criminal penalties. It is not clear what problem this bill is attempting to solve since today HI is successfully hosting a billion dollar transient rental business operating without any such licensing requirement which is one of the single largest sources of tax income for the state. Attempting to regulate this will not only be onerous to transient property owners but also be a significant burden on the HI government and its taxpayers. The states efforts would be far better spent focusing on specific areas of enforcement of current transient rental laws rather than create an entirely new, unnecessary, and expensive layer of bureaucracy. Mahalo, Carl Hu Honua Kai Hokulani 229 130 Kai Malina Parkway Lahaina, HI 96767

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From: [Christian Ruhrmann](#)
To: [TSI Testimony](#); [PSMTestimony](#); [CPN Testimony](#)
Subject: I OPPOSE SB1237
Date: Tuesday, February 17, 2015 5:49:01 AM

To Whom it May Concern,

There is no evidence or generally held opinions that passage of SB1237 is likely to cause TVR owners who have already failed to register with the Tax Department or to pay taxes.

TVR owners tht would largely be impacted are the ones already operating legally with Tax IDs, permits and in compliance with ACT 326.

The provisions are burdensome and the penalties excessive for those who are doing what is appropriate and required by law.

To remedy the State's problem caused by those who do not follow the law, please enact more appropriate measures that will identify TVR operators who are not permitted and registered with the Department of Taxation and filing GE and TA tax returns.

I respectfully ask that you oppose this measure and please carefully consider the detailed proposals offered in testimony from RBOAA.

Sincerely,

Christian Ruhrmann

From: [Cori Rondoni](#)
To: [TSI Testimony](#); [PSMTestimony](#); [CPN Testimony](#)
Subject: Testimony on SB1237
Date: Monday, February 16, 2015 7:30:25 AM

I OPPOSE SB1237

There is no evidence, nor any reason to believe, that passage of SB1237 is likely to cause TVR owners who have already failed to register with the Tax Department or to pay taxes to do so with the passage of this bill. The illegals have disregarded every law on the books while the rest of us register and pay taxes and comply with all law. SB1237 is burdensome and has excessive penalties. Instead, enforce laws already in place (Act 326) and carefully consider the detailed proposals offered in Testimony from RBOAA.

TVR owners that would largely be impacted by SB1237 are the ones already operating legally with Tax IDs, permits and in compliance with Act 326.

The provisions are burdensome and the penalties excessive for those who are generally doing what is appropriate and required by law.

To remedy the State's problem caused by those who do not follow the law, please enact more appropriate measures that will identify TVR operators who ARE NOT permitted and registered with the Department of Taxation and filing GE and TA tax returns.

Again, I ask you to Oppose this measure and please carefully consider the detailed proposals offered in Testimony from RBOAA.

Respectfully submitted,

Cori Rondoni

From: [Cynthia Ruhrmann](#)
To: [TSI Testimony](#); [PSMTestimony](#); [CPN Testimony](#)
Subject: I OPPOSE SB1237
Date: Monday, February 16, 2015 7:13:01 AM

To Whom it May Concern,

There is no evidence or generally held opinions that passage of SB1237 is likely to cause TVR owners who have already failed to register with the Tax Department or to pay taxes.

TVR owners tht would largely be impacted are the ones already operating legally with Tax IDs, permits and in compliance with ACT 326.

The provisions are burdensome and the penalties excessive for those who are doing what is appropriate and required by law.

To remedy the State's problem caused by those who do not follow the law, please enact more appropriate measures that will identify TVR operators who are not permitted and registered with the Department of Taxation and filing GE and TA tax returns.

I respectfully ask that you oppose this measure and please carefully consider the detailed proposals offered in testimony from RBOAA.

Regards,
Cynthia Ruhrmann

From: [Douglas Mitchell](#)
To: [TSI Testimony](#); [PSMTestimony](#); [CPN Testimony](#)
Subject: SB1237
Date: Sunday, February 15, 2015 6:19:22 PM

I am Doug Mitchell and I oppose SB1237. I own transient rental property in Maui. This bill is being pushed by property management companies who have lost business because of changes in how business is conducted. My clients are very satisfied with how I run my business (If you were to read the review section in VRBO, you would hear of my many happy clients). I formerly had a management company and they did such a lousy job that I was forced to go it on my own. Almost all my customers were gathered by my wife and I and funneled to the property manager. One year they managed to provide me with three rentals that they got on their own. I pay GE and TA taxes on a monthly basis. I also pay elevated property taxes because I use my condos as transient rentals. Let the honest owners alone and go after those who are not complying with the tax laws as they exist.

From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: jill_oudil@telus.net
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 10:09:50 AM
Attachments: [HB825 SB1237.docx](#)

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jill Oudil	Individual	Oppose	No

Comments:

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Joe Slabe
C312, 2531 S Kihei Road
Kihei, HI
96753
joeslabe@hotmail.com

Aloha,

I am writing to oppose SB 1237.

Together with RBOAA, I have to **OPPOSE** this bill, however, there are many good ideas in this bill and so a small group of RBOAA members and advisors dedicated significant resources to develop a number of **SUGGESTED AMENDMENTS**, which we believe will **SIGNIFICANTLY IMPROVE** the bill.

This bill is very long, very complex and very comprehensive, resulting in this testimony being long and comprehensive. We have provided an executive summary, followed by the detailed changes proposed.

1. Rather than create a new license, which would be subject to the Hawaii Sunrise Analysis, we propose to utilize the existing DCCA "designation of a business in good standing". The requirements to obtain the designation would largely be the same as provided in the bill.
2. We propose to eliminate the bank trust account. The nature of our business is such that we are not holding funds *on behalf* of other parties, therefore there is no need to keep such funds separate from our own business. Once a guest pays for the rental, the funds belong to the owner. This change makes this bill consistent with the landlord tenant code.
3. We propose that the Department of Taxation be responsible for investigating non-compliance with the tax codes and levying penalties as necessary, in accordance with the tax codes.
4. We propose that the counties be responsible for investigating non-compliance with county zoning and bylaws, and levying penalties as necessary, in accordance with the county laws
5. We propose that the circumstances under which the Director could revoke licenses be listed. We are suggesting it be limited to 3 specified violations.
6. We propose the Director be responsible for communicating the requirements of a transient vacation rental owner to all property owners.
7. We propose the Director set up an online database which can be searched to determine if a designation of a business in good standing has been issued.
8. We propose the property manager or caretaker/custodian be held liable for maintaining compliance under this section when engaged to do so by the owner.

9. We propose the definition of transient accommodation be any rental under 180 days to conform to the landlord tenant code.
10. We propose to delete the 24x7 availability requirement of the local contact
11. We propose hotels and resort clubs be liable to collect TAT on the full rental amount.
12. We have proposed a number of other administrative changes.

Our suggested amendments, in order they appear, along with the reasoning for the amendments follows:

- In the definition of Local Contact, remove “...or having a principal place of business”.
 - The Local Contact was intended to be an individual.
- In the definition of Local Contact remove “...who shall be available on a twenty four hour, seven day a week basis.”
 - There is no other business, other than emergency services, which is required *by legislation* to provide that level of customer service.
- In the definition of Transient, change the “thirty days” to “less than 180 days”
 - to be consistent with the landlord tenant code and the definition of Transient Accommodations on page 16.
- In the definition of Transient vacation rental, change the “thirty days” to “less than 180 days”
 - to be consistent with the landlord tenant code and the definition of Transient Accommodations on page 16.
- In the definitions, add the definition of License, being “License means a designation of a transient vacation rental business in good standing issued by the Director”
 - This will avoid the state auditors test to determine the appropriate level of regulation and simplify the implementation of this bill.
- Clause 2 (3) – Powers and duties of the Director. Replace “any cause” with “a) failure to collect and remit GET and TAT; or b) failure to maintain compliance with county ordinances; or c) failure to maintain a Local Contact.”
 - The term “any cause” is very broad and therefore difficult for both the director and the transient accommodation provider to comply with.
- Clause 2 (5) Insert a new clause “Clearly communicate all of the requirements of a transient vacation rental owner or operator a) on a separate page on the DCCA website, b) in a brochure mailed to all current

and new holders of a transient accommodation tax registration number, c) through the purchasing real estate salesperson, all purchasers of property in the state of Hawaii, and d) to all current owners of property in areas where there is transient vacation rental activity.”

- We believe the director should have an education mandate as well.
- Clause 2 (6) Insert a new clause “Create an online database which will allow any person to search an address to determine if a designation of a transient vacation rental business in good standing has been issued”.
- Clause 3 (a) – Replace the current wording with “The Director will establish the designation of “transient vacation rental business in good standing”. The designation will be given when the criteria identified in Clause 3 (b) are submitted by the TVR owner along with the appropriate fees, which shall be deposited into the compliance resolution fund under section 26-9(o).”
 - This amends the clause to be consistent with the concept of not being licensed and using the business in good standing which already exists in Hawaii.
- Clause 3(b)(4) – replace this clause with “A certificate from any nongovernmental entity with authority over the property on which the transient vacation rental is located declaring the owner is in compliance with the regulations of the nongovernmental entity.”
 - In the interests of expediency and to prevent the waste of paper and digital memory space
- Clause 3 (b)(6) – Delete this requirement. Alternatively, insert the words “If the operator is a real estate licensee” at the start of the clause.
 - Real estate licensees are required to hold separate client funds from their own business funds. In the case of the owner-operator, this is not applicable as the funds are received from guests at the time the contract terms are met and therefore are not held in trust for another party.
- Clause 3 (b)(7)(C) – As returns are filed electronically, amend to read “...tax filings, or proof of filings for the previous two years ...”.
 - If the Department of Tax has the ability to issue a certificate of compliance, this would be the most preferable documentation.
- Clause 3(c) – Amend to read “The owner or operator....”
 - Many owners have chosen to delegate the operating responsibilities to a real estate licensee who would therefore be responsible for compliance with this legislation.

- Clause 3(c) – Further amend to include “The owner or operator of the transient vacation rental shall update the Director of any changes within 60 days”.
 - Currently this text is not included in any numbered clause.
- Clause 5(a)(2) – Remove the reference to “seal” and replace with “designation of transient vacation rental in good standing”.
 - We are unsure how one would be able to include an official seal in an on-line advertisement. Websites such as VRBO and FlipKey do not permit graphics.
- Clause 5(b) – Amend to read “The owner or operator shall...”
 - Many owners have chosen to delegate the operating responsibilities to a real estate licensee who would therefore be responsible for compliance with this legislation
- Clause 5(b)(3) – Remove “...who shall be available on a twenty four hour, seven day a week basis.”
 - There is no other business other than emergency services which is required *by legislation* to provide that level of consumer protection.
- Clause 6(a). Recommend deleting this clause entirely. Alternatively, Insert the words “If the operator is a real estate licensee” at the start of the clause.
 - Real estate licensees are required to hold separate client funds from their own business funds. In the case of the owner-operator, this is not applicable as the funds are received from guests at the time the contract terms are met and therefore are not held in trust for another party.
 - Furthermore, this would be inconsistent with the requirements of landlords under the Landlord Tenant Act who do hold funds and are not required to have trust fund accounts in a Hawaiian bank.
 - It would be helpful to understand that most owner-operators do not receive guest funds from the property manager or the Online rental service provider until the guest has checked in and therefore, there are usually no funds held in advance.
- Clause 6(b) Amend to read “The owner or operator”.
 - Many owners have delegated the operating responsibilities to a real estate licensee who would therefore be responsible for compliance with this legislation.
- Clause 6(b) - Amend to read “...copies of all bank statements, deposit slips, cancelled checks and drafts in accordance with application of Department of Tax requirements.”
 - To be consistent with Section 3 added below.

- Clause 6(b) – Amend the wording from “three business days” to “thirty business days”
 - to align with many other governmental audit notice periods and to be consistent with Section 3 added below.
 - It would be helpful to understand that most owner-operators are small business people and sole proprietors, usually with full time jobs. Three days could be impossibly onerous to comply with.
- Clause 7. Omit this section
 - it is redundant given the requirements set out elsewhere in this bill.
- Clause 8(a). Remove the phrase “...shall be exempt from Chapter 76, ...”
 - It is not reasonable for a branch of the civil service to be exempt from the Hawaii Civil Service Law.
- Clause 8(b)(c)(d). I am not a lawyer and I would defer to a lawyer, but the powers vested in the investigators seem more suited to criminal investigations than civil investigations. I would strongly urge the legislators to ensure there is due process and the rights of citizens are protected.
- Clause 8. Suggest deleting this section entirely and replacing with Section 3 as described below.
- Clause 9 – Replace all of the existing wording with “All penalties are applicable as referenced under the jurisdiction of the department of taxation. The counties shall maintain their own authority to impose penalties for non-compliance with local rules, by-laws and regulations. The Landlord Tenant Code fully contains all rules and regulations and remedies under the law for enforcement under the same.”
 - This amendment is intended to incorporate existing regulations and penalties and to prevent jurisdictional overlap between departments and levels of government.
- Section 2 (1) Amend the definition of Gross Rental by replacing “club fees” with “any and all non-discretionary fees”.
 - There are many ways to break the total rental into component parts, but for purposes of Transient Accommodation Tax, all components of the rental must be taxable.
- Section 3. Insert new section 3 to read:

“SECTION 3. Section 237D-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director of taxation shall administer and enforce this chapter. In respect of: (1) The examinations of books and records and of taxpayers and other persons, (2) Procedure and powers upon failure or refusal by a taxpayer to make a return or proper return, and (3) The general administration of this chapter, the director of taxation shall have all rights and powers conferred by chapter 237 with respect to taxes thereby or thereunder imposed; and, without restriction upon these rights and powers, sections 237-8 and 237-36 to [237-41] 237-41.5 are made applicable to and with respect to the taxes, taxpayers, tax officers, and other persons, and the matters and things affected or covered by this chapter, insofar as not inconsistent with this chapter, in the same manner, as nearly as may be, as in similar cases covered by chapter 237.

(b) The counties maintain authority and have jurisdiction to enforce their own permitting and zoning regulations"

Mahalo for your time and service to the people of Hawaii,

Joe Slabe

From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: john.eckel@pinninvest.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Sunday, February 15, 2015 2:24:06 PM

SB1237

Submitted on: 2/15/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
john eckel	Individual	Comments Only	No

Comments: I own a vacation property in Maui which I hope will eventually be my residence in retirement. In the meantime I visit on vacation and rent to guests to pay for the expenses of the property. I fully abide by all laws and pay all taxes. And I pay the people who care for well – on average more than \$50 per hour. I OPPOSE SB1237. Before I enunciate my reasons for opposing, I would like to mention a few important points. 1. Hawai’ian tourism has flourished by providing tourists a choice of accommodations: Hotels, private homes and condos rented by property manager and private homes and condos rented directly by the property owner. 2. Competition among all three sources of accommodations is healthy, with tourists and Hawaii’s tourism industry being the beneficiaries. 3. Limiting competition through overbearing regulations will harm competition, tourists and the Hawai’ian tourism industry. 4. If one of the competitors feels so threatened that they try to compete by asking the legislature to pass unfair and over-burdensome laws on their competitors, it is detrimental the integrity of the legislature, the Hawai’ian people and future investment in Hawai’i if the legislation is passed. 5. Passing additional burdensome laws will not change the behavior of those that were not abiding by the original set of laws, but could conceivably change the behavior of those that were abiding by the original laws. Over-reaching legislation will not create more law abiding citizens, but it could lead to disrespect for the law. I Oppose SB1237 because it is over-reaching and unduly harsh on vacation property owners like myself who are abiding by all the laws and regulations. It does not take much insight to identify the self interest forces involved in proposing this legislation which will tie the hands of individual vacation property owners while loosening the restrictions on hotels and resort clubs. While I believe the tenor of the entire Act is overbearing, I find the following particularly egregious: - Requiring a Client Trust Account. These funds are not held in trust for anyone. They are payment for rent. If the legislature is concerned about security deposits and advance payments, they should be assured that the property in question is located in HI and cannot be moved and is probably valued at more than 1000 times the value fo the deposit. In addition, if the legislature truly believes that trust accounts are required, they should be required for all residential and commercial properties, not simply transient accommodations. - Transient Accommodation Tax (TAT) should be charged on anything related to the accommodations, including Resort and Club fees. I further encourage the legislature

to further consider whether the use of “Resort Fee” may be misleading to consumers if they are not fully provided at the time of the reservation in font at least as large as the rate they have been quoted. I oppose this bill in its entirety since it is overly complex and over reaching. I thank you for your consideration and the opportunity to provide testimony

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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: jcashs28@gmail.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 8:49:13 AM

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Judy Cash	Individual	Oppose	No

Comments: I OPPOSE SB1237 There is no evidence or generally held opinions that passage of SB1237 is likely to cause TVR owners who have already failed to register with the Tax Department or to pay taxes. TVR owners that would largely be impacted are the ones already operating legally with Tax IDs, permits and in compliance with Act 326. The provisions are burdensome and the penalties excessive for those who are generally doing what is appropriate and required by law. To remedy the State's problem caused by those who do not follow the law, please enact more appropriate measures that will identify TVR operators who ARE NOT permitted and registered with the Department of Taxation and filing GE and TA tax returns. I ask you to Oppose this measure and please carefully consider the detailed proposals offered in Testimony from RBOAA.

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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: sheehan.kathyharnett@gmail.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 8:59:50 AM

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Kathleen Sheehan	Individual	Oppose	No

Comments: I oppose SB 1237. Unfortunately the TVR owners who would be impacted by this bill are the ones who are already operating legally with Tax IDs and permits and are in compliance with Act 326. There is no evidence that passage of this bill will cause TVR owners who have failed to register or pay taxes to change and comply. On the other hand, the provisions of this bill are burdensome and the penalties excessive for those who are already carefully complying with the law. To solve the problem of TVR owners who do not comply with current law and Hawaii tax requirements, please vote against this bill and consider the very detailed and thoughtful proposals offered in testimony from RBOAA.

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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: crumps5@sbcglobal.net
Subject: *Submitted testimony for SB1237 on Feb 17, 2015 09:00AM*
Date: Saturday, February 14, 2015 2:00:08 PM

SB1237

Submitted on: 2/14/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

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

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: lkmcelheny@gmail.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 8:07:17 PM

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Larry McElheny	Individual	Support	No

Comments: Strongly support ! Mahalo

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From: [Linda Mitchell](#)
To: [TSI Testimony](#); PSMtestimoney@capitol.hawaii.gov; [CPN Testimony](#)
Subject: SB1237
Date: Sunday, February 15, 2015 6:08:39 PM

I am Linda Mitchell, an owner of two condos on Maui used for transient rental. **I OPPOSE SB1237.**

I agree with the recommendations of RBOAA.

It is interesting that the hotel industry and property managers are the ones wanting to change the rules. They may want to "level the field", but I just want to be able to manage my own business.

I do not want to have to put my money in a trust account. Rent paid to me is my money which I use for running the business and making upgrades. A trust account would only be a good idea if someone else were managing my condos as a third party. I do not need to have a third party running my business.

Here are some proposals from RBOAA.

1. Rather than create a new license which would be subject to the Hawaii Sunrise Analysis, we propose to utilize the existing DCCA "designation of a business in good standing". The requirements to obtain the designation would largely be the same as provided in the bill.

2. We propose to eliminate the bank trust account. The nature of our business is such that we are not holding funds on behalf of other parties nor must we keep such funds separate from our own business. Once a guest pays for the rental, the funds belong to the owner. This change makes this bill consistent with the landlord tenant code.

3. We propose that the Department of Taxation be responsible for investigating non compliance with the tax codes and levying penalties as necessary, in accordance with the tax codes.

4. We propose that the counties be responsible for investigating non compliance with county zoning and bylaws, and levying penalties as necessary, in accordance with the county laws

5. We propose to suggest the the Director revoke licenses in only 3 specified violations.

6. We propose the Director be responsible for communicating the requirements of a transient vacation rental owner to all property owners.

7. We propose the property manager be held liable for maintaining compliance under this section if so engaged by the owner.

8. We propose the definition of transient accommodation is any rental under 180 days.

9. We propose to delete the 24x7 availability requirement of the local contact

10. We propose hotels and resort clubs be liable to collect TAT on the full rental amount.

Thank you for your careful consideration.

Linda Mitchell

408-472-6506

From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: mhubner@halehubner.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Sunday, February 15, 2015 8:03:56 AM

SB1237

Submitted on: 2/15/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

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

Comments: Dear honorable Members of the Committee, I write to you today in strong opposition of SB1237. I am the owner of a legal and tax-paying transient vacation rental (TVR) on the island of Hawai'i. I thoroughly agree with the State's intent to assist counties with the collection of taxes and protection of consumers/tourists; however, my review of this Bill indicates that the measures contained within it go far beyond such intent. I comply with Act 326 and ask that any new requirements fairly align with the Act. I have serious issues with the requirement in this Bill that TVR owners establish a client trust account. Many TVR websites (Flipkey, AirBnB, etc.) do not pay owners until 24 hours after the stay. Establishing a trust account in the state would be redundant, as the companies described above are already holding funds in trust. In instances where I directly receive rental funds, I have concern that such requirements in SB1237 would void my civil liberties in directing me to only have an account within the State of Hawaii. The funds that I receive are typically coming from without the State, and making the requirement that they be funneled there may be in opposition to US Commerce laws. Additionally, I find that requirements of adding a seal and new license number to every online advertisement will be overly burdensome and will not likely result in greater compliance with the law as I do not know if the current requirements are enforced. I do not object to an additional TVR license, if such license will be effective to assisting the Departments of Consumer Affairs and Taxation weed out bad actors and bring TVRs into compliance with existing laws; however, the intent behind such licensing and the manner in which the Director may immediately revoke such licenses is not clearly defined in this Bill. Finally, this Bill establishes an investigative wing of the Department which has authorities that astonish me. As mentioned above, I'm not sure if the simple requirements of of Act 326, such as placing Tax IDs on our advertisements, have been clearly enforced since it was adopted in 2012. This Bill goes further and tasks the Department to use any means necessary, including private investigators, to inspect our private property at any time or serve warrants! Please excuse my hyperbole, but I cannot read this Bill and help but feel that we are being stigmatized as criminals. In the end, I truly want to express that my primary concern in this small business I have created is the safety and happiness of my customers. I support any action that this State can take to receive it's taxes due and better help it's consumers/visitors. I do not believe this Bill is one of those steps. I request that this

Bill be deferred, and I strongly suggest that any bills relating to TVRs in future legislative sessions be drafted with full stakeholder involvement. Mahalo for your time and allowing this testimony. Matt Hubner

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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: MMCGARRY@REMAX.NET
Subject: *Submitted testimony for SB1237 on Feb 17, 2015 09:00AM*
Date: Monday, February 16, 2015 9:30:37 AM

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
MICHELLE MCGARRY	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: dreamwalker4141@gmail.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 3:46:52 AM

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Mika Roberts	Individual	Oppose	No

Comments: For all of us whom diligently pay our taxes and manage our properties with integrity. Respectfully, I oppose.

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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: milomcgarry@gmail.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 10:01:46 AM

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Milo McGarry	Individual	Oppose	No

Comments: This legislation is unfair and is an example of cash grabbing at its worst. Respectfully, the State Legislature should be making it easier to do business in Hawaii, not harder.

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February 15, 2015

Nina Nychyporuk and Richard Waugh
2780 Cultus Court
Coquitlam, BC
Canada V3C 5A8

Committee on Tourism and International Affairs
Senator Gilbert Kahele, Chair
Senator J. Kalani English, Vice Chair

Committee on Public Safety, Intergovernmental and Military Affairs
Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair

<http://www.capitol.hawaii.gov/committeepage.aspx?comm=CPN> Committee on Commerce and
Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

Re: OPPOSE Senate Bill 1237 (SB1237)

Honourable Committee Members:

Thank you for the opportunity to respond to SB1237. Our names are Richard Waugh and Nina Nychyporuk. We have collected and remitted over \$45,000 in GET and TAT taxes during the time we have owned and operated a transient accommodation (TA) vacation rental property on the Big Island.

SB1237 provides for the licensure of TA vacation rentals and sets forth a range of requirements and responsibilities for owners. Because of the large number of new requirements, some of which seem to present an excessive burden on a small business owner, we must respectfully **oppose** SB1237. More specifically, we **oppose** SB1237 because it requires the following:.

- The owners of TA vacation rentals to be licensed;
- Among other requirements, the owners of TA vacation rentals to post the contact information of a local contact in the rental unit and the rental agreement or contract, together with their business license number; and
- The owners of TA vacation rentals to establish client trust accounts at a financial institution based in Hawaii.

We also **oppose** SB1237 because it establishes as prohibited acts, the unlicensed operation of a TA vacation rental, and provides that any advertisement in any form of a TA vacation rental is *prima facie* evidence of the operation of a TA vacation rental.

We further **oppose** SB1237 because it and other similar, recent Bills that are progressing through the current session of the legislature appear to violate the North American Free Trade Agreement (NAFTA). More specifically, SB1237 will treat non-resident Canadian owners who invest in Hawaii less favourably than the most favourable treatment accorded, in like circumstances, by the state to investors who are resident in Hawaii. NAFTA Article 1102 states the following:

National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to 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.
3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.
4. For greater certainty, no Party may:
 - (a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or
 - (b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

While we understand the intent of the SB1237 is to address illegal short-term rentals and non-compliance with tax legislation, it is unclear that the Bill's licensing and enforcement provisions will resolve the issues associated with TA vacation rentals. Moreover, we believe relevant and appropriate laws already exist to enforce compliance and punish those who violate the legislation. Burdening the owners of TA vacation rentals with more agency control would not necessarily enhance the enforcement of non-compliance and it will take a long time to develop and implement an effective system to license and monitor this category of the industry.

In reference to the requirement to establish client trust accounts with a financial institution located in Hawaii, it is not a requirement of all business that operate in Hawaii to maintain a bank account that is domiciled in the state. This discriminatory requirement could well be

unconstitutional.

In reference to the requirement for owners to make their books and records available for inspection, the Department of Taxation already the legislative authority to audit and inspect the books and records of such business. Duplicating of another department's authority is unnecessary.

In reference to enforcement and inspection, it is the responsibility of the counties to determine who is legally zoned for a TA rental.

We oppose the \$10,000 civil penalty for each separate offense and the revocation of any license for any cause. "Any cause" is too arbitrary and subjective and the monetary penalties are overly harsh for small infractions.

We kindly ask you not to pass SB1237 and thank you for the opportunity to testify on this measure.

Sincerely,

Nina Nychporuk and Richard Waugh
Non-Resident Owner-Operators and Visitors

From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: robstewart49@gmail.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Sunday, February 15, 2015 10:36:59 PM

SB1237

Submitted on: 2/15/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

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

Comments: Please defer SB1237 Code 467-2 provides for an owner of property to manage and rent their own property. It is not subject to a special Professional and Vocational licensing to be able to exercise this right. It would also be an inconsistent application of the law to allow owners renting for longer than 180 days to not be subject to licensing but only segregate out owners who rent for less than 180 days. All property owners when renting are subject to the landlord tenant codes, and they should be treated the same. Additionally a property owner's right to manage their own property is again reaffirmed in 237D-4 Hawaii law relating to Transient accommodation -certificate of registration. Section 3(b)(quote) If the license fee is paid, the department shall not refuse to issue a registration or revoke or cancel a registration for the exercise of a privilege protected by the First Amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 237D-14 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.(end quote) If the tax department does not withhold the registration due to the US Constitution -- then would it be Constitutional for DCCA to withhold this privilege for any cause as it is worded in this bill. This bill proposes the strongest regulation of personal licensing. It proposes to withhold our license for many causes. Many of which are already covered with fines under the tax codes which results in duplicate fines for the same offense. The fines proposed are extreme when comparing the same violation for any other business or taxpayer it would be less. For example a condo-hotel operator has far fewer restrictions and fines and penalties. We are subject to a demand to enter our property and search it for "investigation" The tax department code on enforcement does note that they need probable cause to get a warrant to enter a premises. This bill forgoes probable cause. I support full tax and zoning compliance and adhering to the landlord tenant code. Act 326 was only fully implement last year. It impedes compliance to have laws change so frequently. Compliance takes education and if the laws keep changing even those of us who make every effort to comply - are left in confusion. Your tax department testified in 2012 for the hearing for Act 326 that if I.D. were put in advertising, the tax department would have what they need for compliance. I hope you will consider retaining Act 326. Thank you for the opportunity to submit

testimony.

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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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: mauinuts@aol.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 7:57:45 AM

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Randall Lorenz	Individual	Comments Only	No

Comments: Respectively, we oppose the proposed legislation HB 825 / SB 1236 as discriminatory. We are a small business that owns and operates two short term vacation rental condos in Ka'anapali. We think we should be treated like any other small business that has been issued a sales tax license. To my knowledge, the burden of collecting, reporting and remitting accurate tax payments is a direct fiduciary responsibility belonging to the business owner alone. We consider it to be an unfair business practice to impose special treatment to a subset of business people. It appears that many of the proponents of this legislation stand to gain financially at the expense of others that have made the investment and taken on substantial risk. Our small business fairly and accurately supports local jobs, merchants and the state of Hawaii. We regard this legislation as an unnecessary layer of oversight that creates the potential for unintended consequences and far greater harm than good.

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From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: tgardiner@intergate.ca
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Monday, February 16, 2015 9:06:27 AM
Attachments: [SB1237.docx](#)

SB1237

Submitted on: 2/16/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Terry Gardiner	Individual	Oppose	No

Comments:

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From: [Trevor Alt](#)
To: [TSI Testimony](#); [PSMTestimony](#); [CPN Testimony](#)
Subject: I oppose SB1237
Date: Monday, February 16, 2015 6:53:47 PM

There is no reason to believe that passage of SB1237 is likely to cause Transient Vacation Rental (TVR) owners who have already failed to register with the Tax Department or to pay taxes.

TVR owners that would largely be impacted are the ones already operating legally with Tax IDs, permits and in compliance with Act 326.

The provisions are burdensome and the penalties excessive for those who are generally doing what is appropriate and required by law.

To remedy the State's problem caused by those who do not follow the law, please enact more appropriate measures that will identify TVR operators who ARE NOT permitted and registered with the Department of Taxation and filing GE and TA tax returns.

I ask you to Oppose this measure and please carefully consider the detailed proposals offered in Testimony from RBOAA.

Very truly yours,

Trevor Alt

CELL (775) 815-5140

My Maui ground floor 2/2 luxury vacation rental condo at Honua Kai resort and spa at the beach:

www.vrbo.com/586663 (best for making inquiries, secure online payment system and availability calendar)

www.flipkey.com/lahaina-condo-rentals/p775439/ (way more pictures than VRBO)

www.mauirealestatephotography.com/landing/honua-kai-konea-142/ (video tour of condo and Honua Kai resort)

My Maui guide: <http://bit.ly/1mNfv8i>

My Lake Tahoe Vacation Rental Home:

www.vrbo.com/367619

www.facebook.com/tahoelodgingonline (see photo albums and "like" us)

My Lake Tahoe guide: <http://bit.ly/1as2wkJ>

From: mailinglist@capitol.hawaii.gov
To: [TSI Testimony](#)
Cc: tlvu@live.com
Subject: Submitted testimony for SB1237 on Feb 17, 2015 09:00AM
Date: Sunday, February 15, 2015 5:24:32 AM

SB1237

Submitted on: 2/15/2015

Testimony for TSI/PSM/CPN on Feb 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Tuan Vu	Individual	Oppose	No

Comments: Honorable Chair and Committee Members: In June 2014 CNBC named Hawaii the 2nd WORSE state to conduct business in the US. This bill is an excellent example of that. I have a condo in the Maui Vista resort in Kihei that I self-manage for the last three years. I list my condo on VRBO with my license number clearly spelled out. I collect the GE and TA taxes from my guests and submit them to the Hawaii Taxation Department religiously. The state has existing laws to protect consumers and to penalize those operating "under the radar" for not submitting their fair share of GE and TA taxes. Please hire more resources to police the existing laws. This new bill is unfair and extremely heavy handed and penalizes owners who manage out properties by introducing more red tapes to the system. The dishonest owners will not follow these new rules because of a lack of enforcement, only the honest owners get hurt by this new bill. For this reason I oppose bill SB 1237. Mahalo for the opportunity to provide testimony.

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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