

From: [Elen Stoops](#)
To: [PSMTestimony](#); [TSI Testimony](#); [CPN Testimony](#)
Subject: Fwd: Feb. 17 Hearing on SB1237. OPPOSE
Date: Tuesday, February 17, 2015 6:39:35 PM

This is a RESEND of testimony that was sent on Feb. 14 for the Feb. 17 hearing. It was MISSING the testimony file and I request that you place into LATE testimony and update the SB1237 site, for the hearing that has been deferred.

Thank You.

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From: **Elen Stoops** <stoopse@gmail.com>
Date: Sat, Feb 14, 2015 at 7:07 AM
Subject: Feb. 17 Hearing on SB1237. OPPOSE
To: planning@mauicounty.gov, PSMtestimony@capitol.hawaii.gov,
TSItestimony@capitol.hawaii.gov, CPNtestimony@capitol.hawaii.gov
Cc: Elen Stoops <stoopse@gmail.com>

Dear Legislators,

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

I own and self manage a transient accommodation in a Hotel zoned district in Maui County.
I comply with legal requirements specified in Act 326.
I OPPOSE SB1237.

This Bill Fails to Address the States' Largest Problem with TVRs

This bill has little chance to effect its alleged purpose which is to bring under control and regulate unregulated rentals, or "to level the playing field" as is stated verbatim in two separate Hotel testimonies for companion bill HB825.

Legal rentals are ***already regulated (per Act 326)*** and are already registered with the proper County Agency. They are not underground, they have made themselves clearly identifiable, auditable and must comply with existing laws or face penalties as provided. This is NO Secret. But it's an inconvenient fact for the bill's primary supporters, who are economic beneficiaries if this measure or one like it are enacted.

Backers falsely present SB1237 and its companion bill HB825 as the way to solve the State's massive underground TVR problem.

They use the huge Public Uproar over the lack of results to stop the underground, illegal/unpermitted and unregulated TVRs... to Set the Stage.

Next step: Presume Guilt. Guilt by Association is the method. Use Illusion to tie those guilty of NOT complying with the law to those who ARE meeting the letter of the law

in every way.

Once they have accomplished this slight of hand to make all TVR owners guilty by association, exploit the Elephant in the Room ... employ the us vs. them or the Locals vs. non-Locals methodology to further deepen animosities, to provide "justification" for penalizing non-residents for being non-residents. Now..... let's introduce a bill.

It's also an inconvenient fact that SB1237 fails to produce what it's advertised to do. To the backers, however, this is of small consequence as the net result will be at least some economic benefit for themselves. With respect to the illegal and underground TVR problem, let us all now separate ourselves from *that* problem. We can deal with that one later.

Agencies Comment that the measure is flawed. Creates Problems, Confusions and unlikely to Achieve an Effective level of Enforcement.

I am thankful to have had the opportunity to carefully review the 66 pages of testimony provided on the companion bill to this measure, HB825. It afforded me further helpful insights into the responsibilities of Hawaii's State and County Legislative and Enforcement Bodies.

Support for this Measure

Review of comments provided by Director of Taxation in Honolulu in support of HB825 (and thereby applicable to SB1237) reveal:

- Department says it is unable to deal with the "non-tax related issues", and therefore the DCCA should be involved. Little detail or explanation is provided except mention of the responsibility to maintain a database.

This does not ensue that Department of Taxation has been burdened with enforcement of non-tax related issues. Local Tax Departments have been tasked with maintaining a database of information that is provided to them annually by owners or condominium Associations.

This "non-tax related" item is not significant as to warrant or provide support for the proposal to create a new regulatory responsibility within the DCCA.

Reservations on this Measure

Review of comments provided by Directors and/or Officers of State and County Agencies, showed their reservations on HB825 (and thereby applicable to SB1237):

- duplicate processing requirements [proposed] are redundant, unfair, [and] serve no purpose. unclear impacts of additional licensing requirements - Honolulu DPP, RICO
- while civil fines assessed for those in blatant violation of the code should be sufficient to deter illegal use [ie illegal TVR], those illegals will in all likelihood not comply [with this

new proposed law]. Unclear if proposed new regulations are an effective response to address issues relating to transient vacation rentals - Honolulu DPP, RICO

- this bill creates a requirement for a Sunrise Analysis, required by the Hawaii Regulatory Licensing and Reform Act." - RICO, DCCA

- [this bill, by] creation of two enforcement options may create confusion as to roles and responsibilities and thereby can undermine effective enforcement. - RICO

- lack of clarity on agencies' (plural) handling of fees and penalties and whether they would be applied concurrently on offenders. - RICO

Producing a REQUIRED Sunrise Analysis and the Likely Outcome

Guidelines in a Sunrise Analysis* provide that:

1. [new] regulation be undertaken only when reasonably necessary to protect consumers.
2. regulation may not be introduced to advance an occupation or reasonably restrict another, and
3. regulation must be "rational" in that its stated purpose is shown by evidence to be reasonably accomplished by the regulation.

*(per Hawaii Regulatory Licensing and Reform Act Section 26H-6)

Item 3 above requires that for new regulation to be enacted it must demonstrate evidence of likely accomplishment by new regulation.

If "evidence" were to be considered, the only related material/evidence available is a study that was performed which was referenced in the 2012 legislative session relating to bills for TVRs. It was had been told that evidence in this study showed that non-residents of the state were evading making appropriate tax payments on their transient accommodations. This in turn was used to substantiate the need at that time to create special restrictions for owners of rental real estate that were not from Hawaii.

What was discovered later was that the referenced study actually said the opposite. It essentially said that there was no difference in the rate of appropriate remittance of taxes owed to the state for vacation rental owners that lived either in the State or out of the State and in fact that out of state tax payers were "generally in compliance".

Since 2012 I am not aware of any studies that have been created that point to and substantiate tax remittance problems for those who are following the outlined procedures in Act. 326.

Development of Evidence is necessary for New Regulation that meets requirements set forth in Hawaii Regulatory Licensing Reform Act

If tax remittance is important to the Counties and the States and suspected to be a problem within the population owners of TVR a study should be performed by an independent 3rd party with no conflict of interest or stake in the outcome. In that certain groups are regularly proposed to be isolated and treated differently by the bills that have been proposed since 2012, it is useful that the study includes these artificial divisions, namely:

- Accommodations rented under a Property Management program
- Accommodations rented by the Owner
- Accommodations rented that are owned by someone off-island
- Accommodations rented that are owned by someone that resides on the same island
- Accommodations rented by those who have all applicable registrations and permits
- Accommodations rented by those who do not have all the applicable registrations and permits

This information will help the legislators enact meaningful laws and regulations and will potentially assist the Department of Taxation to more effectively focus its resources to improve tax collections. *Any legislation that seeks to isolate one group and treat it differently and less favorably than another with no compelling evidence or need by the state to do so shall fail U.S. Federal Anti-Trust Law and will be litigated against.*

Likely Outcome of a Sunrise Analysis - will reveal that SB1237 fails in each of the required metrics

1. The evidence will show that the bill does not meet the criteria of new regulation being required to protect consumers.
2. The evidence will show that the bill does not meet the criteria that new regulation shall not be introduced where it advances one occupation or restricts another.
3. The evidence will show that the bill does not meet the criteria of a new regulation where stated purpose is supported by evidence it shall be reasonably achieved.

Meanwhile, The Real Large Problem is not Effectively dealt with by this Measure and is Left Unattended to

Unfortunately the problem of illegal TVRs is in fact a real one and should not be neglected. Jurisdiction for this resides in the counties and the foundation and the first place to start is to ensure County Agencies are resourced appropriately for enforcement. If reasonable laws and enforcement activities are not in place at the counties, that needs to be corrected first.

Adding additional layers of regulations upon any county level regulations that are unenforced at best serves no purpose, and at its worst wastes taxpayer money and precious departmental resources. It is illogical and creates further complexities for the stakeholders to manage.

Illegal vacation rentals present a clear and present problem on Oahu. Problems exist, however to a much lesser degree on Maui and Kauai, as they have enacted new laws and steps to deal with the problems in recent times while Oahu has largely done nothing new for 30 years. Hawaii Island which has the least restrictive stance on what is illegal regarding vacation rentals. Many people perceive that this is primarily an Oahu problem and ask why does the State allow its Legislative system to be used in an improper manner.

A recent comment offered by a Hawaii Real Estate Commission person from Maui offered this: [my] impression is that there is no universal solution to solve the problem. The issue should be handled by each individual county to address their specific issues.

Another HiREC official noted that it seems as if Hawaii County is the only County to have embraced vacation rentals.

So I appeal to you to oppose this measure. It is not a wise use of the State's Legislative system, it represents a large risk to meet any of the 3 standards required in the Sunrise Analysis, and it will not address the problem it may be purporting to solve.

My Conclusions and Requests

If permitting discrepancies and illegal TVR activity is known or suspected, give the Counties adequate resources and/or tools to the assist their responsible departments to identify which properties are illegally involved in providing transient accommodations, issue citations and enforce compliance.

If subsidies are required to help the Hotel industry to "level the playing field", please consider as a more direct and suitable solution. Tourism is essential to Hawaii's economic welfare and Hotels are an essential element in ensuring the State's continued success. It is proper for a State or Municipality to support it's economic needs.

Please allow us taxpaying owners of legally compliant vacation rentals the chance to go back to doing what we do best - providing genuinely wonderful vacation lodging options for the visitors of this Great State and contributing handsomely to Hawaii's economy and the welfare of affiliated small businesses' owners and employees.

I OPPOSE HB1237. Please vote no on SB1237.

Thank you for considering my comments on this measure.