



STATE OF HAWAII
DEPARTMENT OF TAXATION
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To: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Ways and Means

Date: Wednesday, April 03, 2019
Time: 10:20 A.M.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 419, H.D. 2, S.D. 1, Relating to Transient Accommodations

The Department of Taxation (Department) supports the intent of Part II of H.B. 419, H.D. 2, S.D. 1, and offers the following comments regarding the tax provisions for the Committee's consideration.

The following is a summary of key tax provisions of H.B. 419, H.D. 2, S.D. 1, which has an effective date of January 1, 2020:

Hosting Platform-Booking Services Liability

- Defines “booking service” and “hosting platform”;
- Hosting platforms are liable for civil fines for collecting fees for booking services for transient accommodations that are not registered under Chapter 237D, Hawaii Revised Statutes (HRS);
- Imposes fines of \$1,000 per booking service transaction for which fees were collected for any transient accommodation that was not registered under Chapter 237D, HRS;
- Excludes booking services related to hotels;
- Provides a safe harbor if the hosting platform obtains the transient accommodations tax (TAT) number in the format issued by the Department; and
- Authorizes the Department to require, by subpoena, hosting platforms to provide the names and TAT numbers of operators.

The Department supports these provisions of Part II of the bill. These provisions will aid the Department in enforcement of the TAT by penalizing hosting platforms that provide booking services to unregistered operators.

Advertising and Reporting Requirements

- Advertisements for all transient accommodations and time share vacation interests, plans, or units must provide the operator or plan manager's TAT number. The use of an electronic link to the TAT number is disallowed;
- Advertisements for all transient accommodations and time share vacation interests, plans, or units must provide the applicable land use permit or registration identification number as provided by the county;
- Operators and plan managers must remove advertisements upon notice that the advertised property is not in compliance with state law or county ordinance. Failure to remove advertisements results in civil fines;
- Transient accommodations brokers, platform hosts, and booking services must provide monthly, anonymized reports of their listings in Hawaii, aggregated by zip code. The reports must be provided to the Department of Business, Economic Development, and Tourism (DBEDT). The reports must include the number of units and available rooms, the total of both available and occupied room nights, the average daily rate, and total revenue. Failure to provide the reports results in civil fines;
- Repeals the misdemeanor for operating a transient accommodation without a TAT license; and
- Imposes civil fines for operating a transient accommodation without a TAT license.

The Department supports the intent of the proposed amendments to section 237D-4, HRS.

Duties as Tax Collection Agent

- A transient accommodations broker who voluntarily registers as a tax collection agent will be required to report, collect, and pay general excise tax and TAT on behalf of all of its operators and plan managers for transient accommodations booked directly through the registered agent; and
- The registered agent's operators and plan managers will be required to be licensed under chapters 237 and 237D, HRS.

Reporting Requirements

- The registered tax collection agent must provide the following information in a cover sheet with every tax return filed with the Department: the name, address, and license identification number of each operator; the address of each transient accommodation; the number of nights that each transient accommodation was rented; the amount of tax being remitted for each transient accommodation; and the amount of income reportable on federal form 1099 for each transient accommodation.
- The registered agent must disclose the information in the cover sheet to the planning director or any county official upon request.

Compliance with Land Use Laws

- When conducting business with an operator or plan manager, the registered agent shall: (1) notify the operator that the property is required to be in compliance with applicable land use laws; (2) require the operator to provide the transient accommodations number and local contact and include said information in the advertisement; (3) require the

operator to provide verification of compliance with state and county land use laws; and
(4) require the operator to provide any other information required by rulemaking.

The Department supports the concept of GET and TAT being collected and remitted by a tax collection agent.

Finally, the Department notes that it can administer the tax provisions of this bill with the current effective date of January 1, 2020. This effective date will allow the Department sufficient time to make the necessary form and computer system changes.

Thank you for the opportunity to provide comments.



HB419 HD2 SD1
RELATING TO TRANSIENT ACCOMMODATIONS
Senate Committee on Ways and Means

April 3, 2019

10:20 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **SUPPORTS** Part II of HB419 HD2 SD1, which seeks to improve enforcement of land use regulations relating to transient vacation rentals, while facilitating the collection of tax revenue from transient vacation rentals that comply with the law. Given the impact of unlawful transient vacation rentals on housing opportunities for Native Hawaiians and other Hawai‘i residents, OHA appreciates and supports the strong and much-needed enforcement mechanisms that would be provided by this measure.

As home prices, rental prices, and homelessness continue to increase, and as O‘ahu anticipates additional population growth and an associated demand for more housing over the next decade,¹ land-use planning that ensures housing affordability and availability is more critical now than ever before. As the legislature recognizes, Hawai‘i is in the midst of an affordable housing crisis: recent research indicates a need for 65,000 more housing units by 2025, with half of this demand for units at or below 60% of the Area Median Income (AMI);² only 11 percent of State’s housing demand is for housing units at or above 140% AMI, or for units that do not meet the State’s current definition of “affordable housing.”³ **With 48% of households in the State already unable to afford basic necessities including housing, food, transportation, health care, and child care,⁴ the lack of affordable housing and rising housing costs require bold and aggressive policies and land use enforcement that meaningfully prioritize the housing needs of local residents.**

Native Hawaiians are particularly disadvantaged by land uses that contribute to our local residential housing challenges, including increased rental housing costs and rental housing shortages in particular. Notably, Native Hawaiians are less likely to own a home and, therefore, disproportionately rely on the rental housing market.⁵ Native Hawaiian households are also much more likely to be “doubled up,” with multi-generational or unrelated individuals living together in single households,⁶ and Native Hawaiian households are more than three times more likely have a ‘hidden homeless’ family member than all state households.⁷

Unfortunately, the unaddressed proliferation of illegal vacation rentals may exacerbate the rise in rental housing costs beyond what Honolulu residents and Native Hawaiians are able to afford, and has directly removed much-needed housing units from

the residential rental market. The 2016 Hawai'i Housing Planning Study estimates that there are 28,397 non-commercial vacation rentals, located in nearly all communities in Hawai'i.⁸ Not surprisingly, the proliferation of such units, which generate nearly 3.5 times more income than the average long term residential rental,⁹ has correlated with substantially increased housing costs throughout the islands; Honolulu in particular had the highest rates of increase in average monthly rent and average daily rent over the past several years.¹⁰ In addition to raising the costs of available long term rental units, the proliferation of illegal vacation rentals also represents a direct loss of housing units from the long term rental market.¹¹

Clearly, allowing the continued illegal use of housing units for vacation rentals will only exacerbate our housing crisis. Without more meaningful regulatory and enforcement mechanisms, there is nothing to stop the negative impacts of illegal vacation rentals on housing opportunities for Native Hawaiians and other local residents. In contrast, each and every illegal vacation rental unit that is returned to long-term residential use is one more unit that can help meet our existing housing demand.¹² **Accordingly, OHA has advocated for regulatory and enforcement approaches that may systemically curb and reverse the impact that illegal vacation rentals continue to have on residential housing opportunities in Hawai'i.**

Accordingly, OHA appreciates and strongly supports the robust enforcement framework provided for under Part II of this measure. This includes the per-booking fine for hosting platforms and transient accommodations brokers who profit from illegal vacation rental operations; the requirement that vacation rental listings include state- and county-level registration numbers; mandatory compliance monitoring and reporting action required of transient vacation rental brokers who wish to act as tax collection agents on behalf of rental operators; the requirement that advertisements for illegal vacation rentals be removed; and clear penalties for noncompliance on both brokers and operators that will deter further unlawful land uses. **Such provisions will appropriately hold those most responsible for our transient vacation rental problem directly accountable for their actions, and subject them to penalties that reflect the magnitude of our growing housing crisis.**

As a final note, research shows that vacation rental activity in the State generally is not likely to provide meaningful and long-term economic benefits to Hawai'i or its residents, including Native Hawaiians. Data has shown that **70% of properties listed as vacation rentals in Hawai'i are owned by out-of-state property owners** who do not reside in the islands.¹³ Native Hawaiians in particular are less likely to benefit directly from a transient vacation rental operation; with Native Hawaiian homeownership rates lower than the state average, they are less likely to own second or additional homes that could be rented as vacation units.¹⁴ As previously mentioned, Native Hawaiians also often live in overcrowded households, without the extra rooms needed to operate an owner-occupied vacation rental. As such, while some Hawai'i residents may be able to earn extra income from the use of a property as a vacation rental, vacation rental operations

primarily benefit nonresident property owners and real estate speculators – who may also seek to buy out any vacation rentals that owned by local residents now and in the future.

In addition, other jurisdictions have found that any economic benefits gained from permitted short-term vacation rental operations are far outweighed by the larger social and economic costs of removing long term rentals from the housing market. For example, an economic analysis by the City of San Francisco found a negative economic impact of \$300,000 for each housing unit used as a vacation rental, exceeding any economic benefits from visitor spending, hotel tax, and associated revenues.¹⁵ Most recently, the Economic Policy Institute has found that, for “internet based service firms” offering transient vacation rental hosting services, “[t]he economic costs [to renters and local jurisdictions] likely outweigh the benefits,” “the potential benefit of increased tourism supporting city economies is much smaller than commonly advertised,” “[p]roperty owner . . . beneficiaries [from hosting services] are disproportionately white and high-wealth households,” and “[c]ity residents likely suffers when [hosting platforms] circumvent[] zoning laws that ban lodging businesses from residential neighborhoods.”¹⁶

Again, the short-term benefits of vacation rental units to some property owners, including non-resident property owners and corporate vacation rental operators, are likely to be substantially outweighed by the fiscal impacts on Hawai‘i and its residents from increased housing costs, increased real estate speculation, and the need for more social services and housing subsidies. **Accordingly, OHA strongly believes that regulatory and enforcement mechanisms that decrease the number of illegal vacation rental units operating in Hawai‘i will best benefit Native Hawaiians and all Hawai‘i residents.**

Therefore, OHA urges the Committee to **PASS** HB419 HD2 SD1. Mahalo nui for the opportunity to testify on this measure.

¹ See SMS, HAWAII‘I HOUSING PLANNING STUDY, at 34 (2016), available at https://dbedt.hawaii.gov/hhfdc/files/2017/03/State_HHPS2016_Report_031317_final.pdf.

² See *id.*

³ See *id.* at 34.

⁴ ALOHA UNITED WAY, ALICE: A STUDY OF FINANCIAL HARDSHIP IN HAWAII‘I (2017).

⁵ See OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN HOMEOWNERSHIP HO‘OKAHUA WAIWAI FACT SHEET VOL.2016, NO. 1, page 3, available at <https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/NH-Homeownership-Fact-Sheet-2016.pdfSheet-2016.pdf>. This figure includes 8,329 DHHL residential lease “owner-occupied” property units. DHHL ANNUAL REPORT 2014, at 47, available at <http://dhhl.hawaii.gov/wpcontent/uploads/2011/11/DHHL-Annual-Report-2014-Web.pdf>. For non-DHHL properties, the Native Hawaiian homeownership rate is therefore 41.2%, 15.5 percentage points below the statewide rate.

⁶ 24.8% of Native Hawaiian households, compared to 9.6% of state households include more than two generations or unrelated individuals. SMS, *supra* note 1, at 70.

⁷ 14.1% of Native Hawaiian households, compared to 4.2% of state households have a hidden homeless family member. *Id.*

⁸ There are an estimated 45,075 total vacation rental units measured by the study. The study estimates that at least 37% of these rentals are ‘commercial’ rentals, or resort condominium and condominium hotel

properties which are legally permitted commercial operations. As such, the study estimates that 28,397 units are non-commercial, i.e. unlawful, transient vacation rentals. SMS, *supra* note 1, at 58.

⁹ SMS, *supra* note 1, at 55.

¹⁰ Honolulu's average monthly rent growth rate was 26.1%, and the six-year growth rate of average daily rental rate was 47%. SMS, THE IMPACT OF VACATION RENTAL UNITS IN HAWAII, 2016, at 8, available at <http://www.hawaii tourism authority.org/default/assets/File/Housing%20and%20Tourism%20113016.pdf>

¹¹ The Hawai'i Tourism Authority's 2016 study found that vacation rentals increased by 34% per year between 2005 and 2015. Further investigation found that between 2011 and 2014, units held for seasonal use and not available for long term rent increased by 12%. See *id.* at 3.

¹² See generally SMS, *supra* note 1.

¹³ Notably, the Hawai'i Tourism Authority report found that 45,075 total properties are available for short term vacation rentals, with between 21,295 and 23,002 as non-commercial vacation rental units advertised in 2016. 70% of these properties are offered by out-of-state property owners. SMS, *supra* note 10, at 5-6.

¹⁴ For non-DHHL properties, the Native Hawaiian homeownership rate is 41.2%, 15.5 percentage points below the statewide rate. See *supra* note 5.

¹⁵ See CITY OF SAN FRANCISCO, OFFICE OF THE CONTROLLER, AMENDING THE REGULATION OF SHORT-TERM RESIDENTIAL RENTALS: ECONOMIC IMPACT REPORT, May 2015, available at http://sfcontroller.org/sites/default/files/FileCenter/Documents/6458150295_economic_impact_final.pdf?documentid=6457.

¹⁶ JOSH BIVENS, THE ECONOMIC COSTS AND BENEFITS OF AIRBNB: NO REASON FOR LOCAL POLICYMAKERS TO LET AIRBNB BYPASS TAX OR REGULATORY OBLIGATIONS (2019), available at <https://www.epi.org/files/pdf/157766.pdf>.



The Senate
The Thirtieth Legislature
Regular Session of 2019

To: Senate Committee on Ways and Means

Date: April 3, 2019

Place: Conference Room 211
Hawaii State Capitol
415 South Beretania Street Honolulu,
Hawaii 96813

RE: HB 419, HD2, SD1, Relating to Transient Accommodations

Chair Donovan M. Dela Cruz, Vice Chair Gilbert S.C. Keith-Agaran and Members of the Committee:

Rental By Owners Awareness Association (RBOAA) fully supports compliance with State taxation laws and County zoning regulations.

RBOAA has concern with a number of the provisions of HB419 HD2 SD, and offer the following:

1. The entire premise of this Bill is based upon the counties having an operable regulatory system for issuing "special use permits." Currently, no county has such a system. CC Honolulu, Kauai and Maui counties only issue special use permits (non-conforming) for those renting transient accommodations outside of the established resort zones. County of Hawaii has spent the last two years in the process of establishing the wide scale registry that this Bill requires. It will not be implemented until later this year. **The requirements of this bill would take years for each county to fully implement.**
2. This Bill requires a "special use permit." However, a TA operator who operates within the permissible resort zones established by the counties should not be required to obtain a special permit to do what is already legal within zone. Those operators should be allowed to register.
3. The Bill establishes a real property tax rate the applies only to transient accommodations or short term vacation rentals. **RBOAA requests that there be a cap not to exceed the level of each county's hotel/resort rate.**
4. The Bill provides for platforms to register as tax collection agents on behalf of its operators. However, **the requirements placed upon the tax collection agents would be a violation of Federal law as well as violate State of Hawaii Constitutional rights to privacy.** As provided in past testimony by the platforms, their attorneys and the Attorney General for the State of Hawaii there are a number of legal challenges with the provisions of this Bill.
5. Page 11, section (d) provides that an operator be held responsible if the tax collection agent fails to pay taxes it has collected but not paid on behalf of the operator. **When there is an agreement between the tax collection agent and the Department of Taxation it would be grossly unfair to hold another accountable for someone else's actions or failure to perform. This portion of the Bill should be stricken.**

6. RBOAA has concern with the tax collection agent providing tax information to the counties. Neither the mayor nor the planning director has **any legal authority to be provided confidential personal tax information. Nor is this required of any other type of business in Hawaii.** There is no enhancement to enforcing zoning requirements by divulging personal tax information. **We respectfully request that this provision be stricken from the Bill.**

We appreciate the opportunity to provide feedback.

Sincerely,

Alicia Humiston President,
Rentals by Owner Awareness Association



April 2, 2019

Senate Committee on Ways and Means

Senator Donovan M. Dela Cruz, Chair; Senator Gilbert S.C. Keith-Agaran, Vice Chair

April 3, 2019, 10:20 A.M.

Conference Room 211

TESTIMONY IN OPPOSITION TO HB 419, HD2, SD1

Dear Chair, Vice-Chair, and Members of the Committee:

On behalf of Airbnb, I wanted to take the opportunity to share our concerns regarding HB 419, HD2, SD1. Airbnb is committed to helping the state solve the long-standing problem of efficiently and accurately collecting taxes from the short-term rental industry in Hawaii. Airbnb collects and remits taxes on behalf of hosts in more than 400 jurisdictions globally, generating more than \$1 billion in hotel and tourist taxes to date, helping cities, states, and our host community around the globe. Our experience in tax collection and remittance can greatly benefit Hawaii by streamlining compliance for the state and removing burdens from hard-working Hawaii residents who share their homes. We are committed to being a good partner to the state and support the legislature's effort to allow short-term rental platforms to collect and remit taxes on behalf of their users.

Unfortunately, while HB 419, HD2, SD1 allows platforms to collect and remit taxes on behalf of hosts, the measure only allows them to do so under onerous and unacceptable conditions and which may conflict with federal law. Because of this, Airbnb can not agree to voluntarily collect and remit taxes under this bill as currently drafted, and we oppose this bill. We have summarized our concerns below:

- To begin, let me address comments that HB 419, HD2, SD1 is akin to the ordinance in place in San Francisco. That is not accurate. HB 419, HD2, SD1 has some provisions that may appear to mirror parts of the San Francisco law, but these are just provisions lifted out of a comprehensive law which addresses the balance of allowable use and enforcement. Renting out all or a portion of your residence in San Francisco is a fully legal activity in every corner of the city. All of our discussions with San Francisco and how it enforces its ordinance have

been grounded in the fact that sharing your home is legal everywhere. This bill would in fact do just the opposite and add even more onerous fines to those sharing their own homes. Again, to equate the San Francisco law and the measure before you is not an accurate comparison.

- Additionally, the bill requires platforms, as a condition of collecting and remitting taxes, to turn over personally identifiable information for people using the platform. This is deeply problematic for a number of reasons:
 - First, this disclosure may conflict with two federal laws - the Communications Decency Act (CDA) and the Stored Communications Act (SCA) in a number of ways. The SCA governs “access to stored communications and records.”¹ In order to comply with the SCA, entities like Airbnb that provide users the ability to “send or receive wire or electronic communications” and that store such communications cannot disclose user data without the appropriate process.² The SCA requires that governmental entities use an administrative subpoena to obtain basic user information (such as name, address, telephone number, and so forth), and get a court order to obtain any information more detailed than that (such as detailed rental activity).³ Testimony from Airbnb’s legal counsel, David Louie, provides a detailed analysis of the bill’s legal flaws.
 - Second, even if this provision did not conflict with federal law, it is wholly unnecessary to ensure accurate tax collection. Indeed, in the dozens of states where Airbnb collects transient occupancy taxes pursuant to voluntary collection agreements (VCAs), Airbnb provides, upon audit, anonymized, transaction-level detail for each booking made through the platform. Anonymized data is sufficient for both reporting and audit purposes because occupancy taxes are transaction taxes, and Airbnb’s audit reports provide all the data necessary to determine whether Airbnb completely and accurately collected and remitted the right amount of tax per transaction. User personally identifiable information neither triggers tax nor is it necessary in order to collect the tax.
 - Third, many of the provisions of the bill, such as state level measures to enforce local legislation, have been outpaced by regulations that have been adopted in Hawaii and Honolulu counties. Late last year, Hawaii County adopted Bill 108 that sets up a registration system for vacation rentals and B&B homes. Additionally, on March 18, 2019, the Planning Committee of the Honolulu City Council adopted Bill 89 CD1 which also

¹ *United States v. Steiger*, 318 F.3d 1039, 1047 (11th Cir. 2003).

² 18 U.S.C. §§ 2510(15), 2711(1)–(2).

³ See *id.* §§ 2702(a)(3), 2703(c); *United States v. Davis*, 785 F.3d 498, 505–06 (11th Cir. 2015) (en banc).

puts in place regulations for both TVUs and B&B homes and establishes local enforcement and registration measures. Further, the purpose of any tax bill is to help ensure the assessment, collection and payment of taxes, not to facilitate the Department of Taxation's enforcement of county land use laws. HB 419, HD2, SD1 includes problematic language such as "the planning director and county official designated to receive the information pursuant to this subsection may examine and copy the returns and cover sheets to ensure compliance with this section, state tax laws and county tax ordinances, and any applicable land use laws and ordinances." Tax payment does not impact a user's county land use liability. Taxpayer information is confidential under state law for important policy and privacy reasons, and should not be used to enforce county land use laws.

- This bill does not contemplate a fair process for regulating the industry but simply seeks to impose harsh fines for engaging in business, on an operator or plan manager who is "not in compliance with all state laws and county ordinances." Thus, an internet hosting platform may be punished with civil penalties if a person or entity with whom it does business is not in compliance with each and every applicable state tax law, traffic law, zoning ordinance, or land use law. Even if this is limited only to land use laws, HB 419, HD2, SD1 thereby seeks to make an internet hosting platform financially responsible for the content (or lack of content) of any online advertisement, and seeks to financially penalize and for the actions or inactions of other people and entities using the internet platform, not for anything that the internet platform has done. These proposed civil penalties against internet platforms are unfair and unwarranted. The bill requires operators and/or property owners to provide the Transient Accommodations Broker, including platforms, "with verification of compliance with state land use laws or county land use ordinances" when no such verification process exists at the state or local level. It asks the operators to generate evidence for which there is no uniform way to demonstrate compliance, and it asks the platforms to be responsible for verifying documents that do not currently exist and do not have a uniform standard.
- Additionally, the bill allows the Department of Taxation to impose harsh civil penalties on operators of transient accommodations. As an example, on Oahu, if a local resident lives full time in their home outside of a resort area, but occasionally rents out a room in their house to generate extra income, that local resident would potentially be subject to civil penalties with little clarity on the process of appeal. Such a vague and open-ended penalty will only further complicate a system that is struggling to keep up with market realities.

- While there has been much discussion among legislators about allowing local residents to share their home legally, this bill does nothing to protect those activities while at the same time imposing hefty civil penalties.
- There has been no discussion of the devastating impact this bill will have on the Hawaii economy, which will be significant, hurting local residents, small businesses, and the entire Hawaii tourism industry. Hundreds of millions, if not billions, of dollars in tourist revenue could be at risk if this bill were adopted as currently proposed. Alternative accommodations support the state's biggest industry and generate millions in annual tax revenue.

In conclusion, because the conditions for voluntarily collecting are so onerous and violate federal law, no platforms will be able to participate and thus this bill will generate zero new revenue for the state while severely negatively impacting the local economy, hurting local residents and businesses. We will continue to work with local leaders to develop common sense regulations on short-term rentals, and remain willing to work with the state to develop a path to allow us to collect and remit taxes on behalf of our hosts.

Regards,

A handwritten signature in black ink, appearing to read 'Matt Middlebrook', with a long, sweeping horizontal line extending to the right.

Matt Middlebrook
Head of Public Policy, Hawaii

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS, Pay Counties for TVR Enforcement

BILL NUMBER: HB 419, SD-1

INTRODUCED BY: Senate Committees on Energy, Economic Development, and Tourism and Public Safety, Intergovernmental, and Military Affairs

EXECUTIVE SUMMARY: Provides that a county shall be eligible to receive funds from the State for the purpose of enforcing all applicable laws and ordinances relating to transient accommodations, provided that no funds shall be released to a county until it has satisfactorily complied with specified conditions. Makes an allocation from TAT revenues.

Allows a transient accommodations broker to serve as a collection agent for general excise and transient accommodations taxes. This type of arrangement would probably enhance collection of taxes because of the difficulty of policing individual owners. However, the number of caveats, conditions, and restrictions that are placed on the broker signing up for this program is so large that it is unlikely that any broker in its right mind would sign up. If no broker is motivated to sign up, this legislation will accomplish nothing.

SYNOPSIS:

Part I

Provides that a county may receive \$_____ for the purpose of enforcing all applicable laws and ordinances relating to transient accommodations and short-term vacation rentals. The county must first, however, (1) establish a real property tax rate that applies only to such uses; (2) develop a process to expediently issue special use permits to (and collect all applicable taxes from) property owners for such uses; (3) establish a registry to track compliance by, and any complaints concerning, special use permittees; (4) establish an expedited process to address alleged violations by permittees; (5) establish an expedited appeal process for parties denied a special use permit; (6) enact ordinances that implement (1) through (5); and (7) through its mayor, notified the governor in writing that it has complied with the conditions described in paragraphs (1) through (6).. Budget & Finance is tasked with reviewing compliance with this system.

Requires reports from counties receiving funds for enforcement of transient accommodations and short-term vacation rentals ordinances.

Part II

Subpart A: Definitions

Adds the following definitions to section 237D-1, HRS:

“Booking service” means any advertising, reservation, or payment service provided by a person or entity that facilitates a transient accommodation transaction between an operator and a prospective transient or occupant, and for which the person or entity collects or receives, directly or indirectly, through an agent or intermediary, a fee in connection with the advertising, reservation, or payment services provided for the transient accommodation transaction.

“Hosting platform” means a person or entity that participates in the transient accommodations business by providing, and collecting or receiving a fee for, booking services through which an operator may offer a transient accommodation. Hosting platforms usually, though not necessarily, provide booking services through an online platform that allows an operator to advertise the transient accommodations through a website provided by the hosting platform and the hosting platform conducts a transaction by which potential renters arrange, use, pay, whether the renter pays rent directly to the operator or to the hosting platform.”

Adds to the definition of “transient accommodations” that the term includes “transient accommodations units”, “transient vacation rentals”, “transient vacation units”, transient vacation use”, or any similar term that may be defined by county ordinance to mean a room, apartment, house, condominium, beach house, hotel room, suite, or similar living accommodation rented to a transient person for less than one hundred eighty consecutive days in exchange for payment in cash, goods, or services.

Subpart B: Hosting Platform Liability

Adds a new section to HRS chapter 201 requiring periodic reporting of data to DBEDT.

Adds a new section to HRS chapter 237D making it unlawful for a hosting platform to provide booking services for compensation in connection with transient accommodations in Hawaii if the operator of the transient accommodation is not registered with the Department of Taxation. Violation is subject to a penalty of \$1,000 per transaction, which may be appealed to the director or designee. Provides that the penalty shall not be imposed if the hosting platform obtains the registration numbers of the operators involved. No penalty is imposed if the transient accommodation involved is a hotel.

Amends section 237D-4(c), HRS, so that any advertisement for a transient accommodation shall include the operator’s or plan manager’s TAT registration number; the local contact’s name, phone number, and email address; and the county-level registration number of the advertised unit. Provides that the operator or plan manager shall remove the advertisement upon notice that the property is not in compliance with state law or county ordinance.

Also requires each operator and plan manager to provide an anonymous monthly report of listings in Hawaii, aggregated by zip code, to the department of taxation by the fifth day of each month with the previous month's data. Provides recordkeeping requirements, and penalties for noncompliance like those that now are in section 237D-4(d).

Subpart C: Transient Accommodations Brokers as Tax Collection Agents

Adds a new section each to HRS chapter 237 and chapter 237D allowing the director of taxation to permit a transient accommodations broker to register as a tax collection agent on behalf of all

of its operators and plan managers. To register, the broker must secure the consent of its operators and plan managers to the disclosure of its returns or return information, agree to furnish information to the counties, and agree that continuing to collect fees for booking services in connection with a transient accommodation, seven days after receiving written notice from a state or county governmental authority that the subject property is not in compliance with state law or county ordinance, is a violation of the tax collection agreement. The tax collection agreement shall be subject to any requirements under state or county law, and does not permit the broker, operator, or plan manager to opt out of any requirements or obligations under state or county law. Defines “operator,” “plan manager,” and “transient accommodations broker” the same as in the TAT law.

The department is required to accept or deny an application for registration within thirty days. Upon acceptance as a tax collection agent, the broker shall report, and collect, and pay over the tax due on behalf of all its operators and plan managers as it relates to activity booked through the broker. Registration does not relieve the broker from any of its own tax obligations, and the operators and plan managers are not protected as to any business activity other than that booked through the broker. Furthermore, owners and plan managers are subject to all requirements of state and law (including county zoning law) as if the agreement did not exist.

A registered broker shall be issued separate licenses with respect to taxes payable on behalf of its operators and plan managers in its capacity as a registered transient accommodations broker tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities. The broker is to file periodic returns reporting income and exemptions as collection agent separately from its own business activity. With respect to taxes collected, the broker is jointly and severally liable with the operator or plan manager for the taxes. If the broker is an entity, responsible officials of the entity are made personally liable for the tax collected but unpaid, together with applicable penalties and interest.

A broker may cancel its registration by delivering a written cancellation notice to the department and its customers; the cancellation will be effective no earlier than 90 days after delivery of the notice. The department may also cancel a registration for any cause, including violations of the tax laws or a breach of the registration agreement.

Requires a broker, before conducting business with an operator or plan manager with respect to a property for lease or rent, to: (1) notify the operator or plan manager that the subject property is required to be in compliance with applicable state and county land use laws and ordinances prior to retaining the services of the transient accommodations broker; (2) require the operator or plan manager to provide the transient accommodations broker, platform host, or booking service with the operator's or plan manager's transient accommodations tax identification number and local contact information and shall notify the operator or plan manager that this information is required in advertisements for transient accommodations or resort time share vacation interests, plans, or units under section 237D-4; (3) require the operator or plan manager to provide the transient accommodation broker, platform host, and booking service with the county non-conforming use registration number, or other unit-specific transient accommodation registration number as issued by the appropriate county agency, and verification of compliance with state

and county land use laws in the form of a written certification, verification, or permit, as applicable, issued by the appropriate county agency; and (4) require the operator or plan manager to provide any other information as may be required by rulemaking.

When the broker files periodic or annual GET or TAT returns, the broker shall also file an electronic cover sheet that includes the following information: (1) for each operator and plan manager on whose behalf the tax collection agent is required to report, collect, and pay over taxes, the operator's or plan manager's name, address, and general excise tax license number; and (2) for each transient accommodation rented through the registered tax collection agent or the website or hosting platform designated in the certificate of registration, for which taxes are being remitted: (A) the address of the transient accommodation; (B) the number of nights that each transient accommodation was rented and the rate or price at which each transient accommodation was rented; and (C) the amount of tax being remitted and the amount of any federal form 1099 income that was derived from each transient accommodation. Provides that cover sheet information or other information contained in the returns filed on behalf of an operator may be disclosed upon request of an appropriate county official to ensure compliance with local land use and zoning laws.

EFFECTIVE DATE: January 1, 2020.

STAFF COMMENTS:

Part I

This bill deals with transient vacation rental (TVR) activity. Some property owners figured out that they could help make ends meet by renting their space, or part of it, to tourists, and were aided in their efforts by platform companies such as AirBnB, VRBO, and Flipkey. The platform companies realized that general excise and transient accommodations taxes were due on such rentals and offered to collect these taxes and pay them over to the State, thinking that tax compliance among TVR owners was, let's say, not widespread.

The bill resulting from those efforts, HB 1850 (2016), passed the Legislature, which was motivated by the prospect of increasing tax compliance and collecting lost revenue. However, the bill was vetoed by Governor Ige, citing objections from the counties that many of the TVRs violated county zoning laws (even though the platform demanded and got representations from the owners that they were in compliance). Legislative efforts to resurrect the "AirBnB bill," as it was called, focused around trying to force the platform companies to suppress any TVR advertising unless the owner could prove compliance with county zoning laws. The owners pointed out that the counties often didn't enforce the laws and had no processes in place for certifying to any owner that the owner's property was compliant with county laws. The counties responded with all-too-familiar excuses of being resource constrained. This bill proposes to break the logjam.

Part II

This part appears to be taken from SB 1292, SD-2. The following comments are primarily directed toward Subpart C.

Act 143, SLH 1998, amended HRS section 237-9 to allow multi-level marketing companies to act as agents to collect and pay over GET on behalf of their independent entrepreneurs. At the time, it was considered beneficial for the marketing companies to collect and pay over tax as opposed to having the Department of Taxation chase down a myriad of independent owners with varying degrees of tax compliance among them.

This bill presents an opportunity for the same logic and policy considerations to apply to transient vacation rental (TVR) activity operating through transient accommodation brokers such as AirBnB, Flipkey, Homeaway, and VRBO, except that the stakes may be a little higher because TAT as well as GET is being collected. This bill would appear to be necessary or desirable to enhance the Department's collection ability given the limited resources available for all of state government including the Department.

TVR activity is a business and the dollars earned in that business are subject to Hawaii state taxes. Specifically, General Excise Tax (GET) and Transient Accommodations Tax (TAT) both apply, so those hosts that are in this business need to register appropriately and pay these taxes. But alas, not everyone does. So, the bill proposes to allow the broker to register with the Department of Taxation and to remit the GET and TAT to the State on behalf of the hosts. Once registered, any time a host earns money on the broker's platform, the broker will pay the taxes and will pay over the balance to the host. The concept is like withholding, with which those of us who receive a paycheck are quite familiar: we work for an employer, the employer pays us our wages, but the employer deducts some taxes and pays them to the Department of Taxation and IRS.

A similar measure, HB 1850 (2016), passed three years ago but was vetoed by Governor Ige. The principal objection concerns county-level restrictions on property use. Some TVR activity violates county zoning laws. Some counties, as well as neighboring residents, see withholding as described in this bill as enabling hosts to hide illegal activities from county law enforcement. Some people have gone further. They blame TVR hosts for wrecking the sanctity of neighborhoods with an unending stream of tourists or for yanking housing units off the market in the name of greed, resulting in stratospheric housing prices that are yet another crippling blow to hardworking families struggling to make ends meet. Then, they turn to the brokers and demand that the brokers stop encouraging and facilitating such illegal, anti-societal, and morally depraved activity.

But do we really want a withholding agent to be our brother's keeper? Is it right to ask our employers to call up our banks and credit card companies to see if we are current on our mortgage and paying our bills on time? If we aren't timely or break the law, should we blame our employers for facilitating illegal or immoral activity by paying us our wages (after the tax authorities have, of course, gotten their share) instead of first making sure that those monies are applied to payment of our debts?

At some point, we need to recognize that TVR hosts, like most employees, are adults. They have chosen to go into business, and they are responsible for running their business and all that it entails. They, as the property owners, are answerable to the counties for the use or misuse of those properties. Certainly, the brokers need to be aware of and compliant with laws that pertain to their business if they are going to be doing business here. But it seems a bit much to ask the brokers to be policemen for the counties when the counties, for whatever reason, can't or won't enforce their own zoning laws.

Ultimate responsibility as to both State tax and county zoning laws rests with the owners of the accommodations, not the broker. Owners may be in varying degrees of compliance with the zoning laws just as they are in varying degrees of compliance with the tax laws. The broker is not in an efficient position to police the former, but effectively can do something about the latter because money from the transient guests flows through the broker's system.

It needs to be kept in mind that the bill is attempting to set up a system for collection of tax that is voluntary. Brokers will need to want to sign up for it for the system to have any effect whatsoever.

Digested 4/1/2019

HB-419-SD-1

Submitted on: 4/1/2019 10:09:38 AM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Stephanie Donoho	Testifying for Kohala Coast Resort Association	Support	No

Comments:



April 3, 2019

Senate Committee on Ways and Means
The Honorable Donovan Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair

RE: HB 419, HD2, SD 1, Relating to Transient Accommodations.

Dear Chairman Dela Cruz and distinguished members of the Senate Committees on Ways and Means:

On behalf of Expedia Group – the globe-leading travel technology platform that empowers travel and tourism throughout Hawai'i – I'd like to thank you for the opportunity to share our story and provide insight into how policies like HB 419, HD2, SD1 could impact the state's robust travel and tourism ecosystem.

Background on Expedia Group

Collectively, Expedia Group brands cover virtually every aspect of researching, planning, and booking travel, from choosing the best airplane seat, to reading personal travel reviews of hotels, to planning what to do in a destination once you arrive. The Expedia Group portfolio serves both leisure and business travelers with disparate needs and budgets—and includes trusted brands like Orbitz, Expedia, Travelocity, Egencia, Trivago, HomeAway, VRBO, and others.

Our vacation rental brands HomeAway and VRBO take immense pride in our long-standing commitment to local vacation rental homeowners, the small business communities they serve, and the millions of families that have used our vacation rental sites to experience Hawai'i in a unique and special way. We believe travelers, communities, and governments benefit from a fair mix of all type of accommodations choices—from boutique hotels and vacation rentals to B&Bs and brand hotels.

Vacation Rentals and Hawai'i's Economy

While we appreciate the Legislature's efforts to adopt reasonable regulation of transient accommodations brokers and hosting platforms, we have significant concerns regarding HB 419, HD2, SD1. We explain those concerns in more detail below, but first it is important to recognize the benefits that Hawai'i's vacation rental industry provides.

- [According to the HTA](#), in 2016, vacation rental visitors spent nearly \$1.2 billion on lodging. In addition, it is estimated that they spent over \$1.9 billion on food, entertainment, and souvenirs. And, HTA estimated that in 2019 visitors would spend about \$1.6 billion on lodging and nearly \$2.6 billion on other local goods and services. Taking over \$4 billion out of Hawai'i's economy would be devastating.

- The growth of vacation rentals in the hospitality ecosystem reflects two important realities: First, travelers are increasingly looking for family and group experiences in whole-home rentals. Second, the availability of those accommodations has become an important criterion for these vacationers.
- Reports have shown that many families prefer to stay in vacation rentals and would choose to stay in a different destination if no vacation rentals were available. They want to rent a home that has multiple bedrooms, a kitchen, a swimming pool, and a yard for their kids. For that growing segment of the tourist population, a hotel is not a suitable substitute for a vacation rental.
- Even if vacation rental visitors were to switch to traditional resort lodging, there would not be enough hotel rooms to accommodate them. Traditional hotels have been operating at an annual capacity of 85% for the past six years, and it does not appear that this will slow down. This is widely considered to be maximum capacity for a hotel. As the HTA has [confirmed](#), vacation rentals are “growing the pie,” not taking market share from hotels.

Expedia Group’s Proposal

Expedia Group is committed to working with the State of Hawai‘i to maintain a healthy vacation rental industry while not creating an overly-burdensome regulatory environment for the broader tourism-driven economy. As it has done in other jurisdictions, Expedia Group welcomes the opportunity to collaborate with taxing authorities in Hawai‘i to help ensure that they are receiving taxes due. That collaboration must be part of a comprehensive regulatory scheme that both regulates the industry in reasonable ways and assures compliance with tax laws.

We believe that such a regulatory framework should be implemented on a statewide basis. Just as the Legislature adopted provisions of Hawai‘i Revised Statutes Chapter 201H to promote development of affordable housing statewide (overriding local rules and ordinances), it should address issues relating to the existence of vacation rentals statewide, instead of leaving the issues to local measures. In this way, the Legislature is positioned to prevent a patchwork of misguided regulatory efforts, such as the new Maui ordinance that imposes ruinous daily fines of \$25,000, which violate the constitutional prohibition against excessive fines.

To demonstrate its commitment to a fair and effective path forward, Expedia Group has adapted the best practices from across the country into a proposed statute that would create a coherent regulatory scheme and a robust method for reporting and collecting taxes. If adopted, it will enable Hawai‘i to collect all the taxes owed and permit vacation rentals to operate in places and ways that are compatible with the reasonable needs of communities on every island.

The key features of this proposed legislation are:

1. Platforms to help promote a balance between healthy communities and a robust tourism economy by supporting responsible limits on vacation rentals, such as:

- a. limits on the number of properties an owner can offer in non-resort areas; or
 - b. limits on the total number of vacation rentals in non-resort areas
- 2. Platforms to offer tools to assist in compliance with tax laws, such as:
 - a. mandatory display of TAT registration number;
 - b. take down within 10 business days upon notice that a TAT registration number is invalid;
 - c. monthly reports of listing URLs and TAT registration numbers;
 - d. quarterly reports of aggregated listing and night data;
 - e. educate operators by providing a link to applicable laws;
 - f. collection and remittance of taxes.
- 3. Statewide legislation with the above-referenced requirements would create consistency as it pertains to local regulation of short-term rentals.

Fundamental Flaws in HB 419, HD2, SD1

HomeAway generally supports the sections of HB 419, HD2, SD1 that permit transient accommodations brokers to act as tax collection agents on behalf of all of its operators and plan managers. While the bill has a well-intended goal, it is flawed in key aspects. Those areas include:

- 1. The bill would impose monetary penalties on transient accommodations brokers (and their agents) if they engage in business with owners of transient accommodations ("operators") who are not in compliance with state and county ordinances. This shifts the government's obligation to enforce its laws entirely to the brokers, requiring them to continually monitor operators' compliance with extensive land use, tax, and licensing laws.
- 2. The bill does not provide a process by which a broker may appeal the tax director's denial of an application for registration as a tax collection agent. The bill also grants the director unreviewable discretion to unilaterally cancel a tax collection agent's registration for any reason.
- 3. The bill would require a registered tax collection agent to disclose private information of operators to government, which violates the intent and purpose of the taxpayer confidentiality provisions in the Hawai'i tax code and would negate protections currently granted to Hawai'i taxpayers. Absent a valid subpoena or court order, these requirements also violate, and are preempted by, the Fourth Amendment of the U.S. Constitution and the federal Stored Communications Act. As such, we cannot support the disclosure of returns, nor furnishing of information to the counties without proper legal process.
- 4. The bill would impose personal liability on any officer, member, manager, or other persons responsible for the filing of returns or the payment of taxes. The bill encourages the various counties to adopt additional and possibly inconsistent ordinances and rules governing vacation rentals.

Expedia Group would welcome the opportunity to share our proposal as HB 419, HD2, SD1, and other related bills, proceed through the legislative process.

Thank you for the opportunity to provide comments on HB 419, HD2, SD1 and please reach out with any additional questions.

Mahalo,

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April 2, 2019

SENATE COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair, Senator Gilbert S.C. Keith-Agaran, Vice Chair

HEARING DATE: Wednesday, April 3, 2019

TIME: 10:20 a.m.

PLACE: Conference Room 211

Re: LETTER ON BEHALF OF AIRBNB OPPOSING HOUSE
BILL NO. 419 HD2 SD1.

Dear Senators:

We write on behalf of our client, Airbnb, in opposition to House Bill No. 419 HD2 SD1 (“*HB 419 HD2 SD1*”). Although we support HB 419 HD2 SD1’s improvements over prior versions of this bill, and its intent to permit hosting platforms to act as tax collection agents, which would further tax collection purposes, these purposes cannot overcome the fact that HB 419 HD2 SD1 impermissibly violates federal law and runs afoul of other constitutional protections.

HB 419 HD2 SD1 contains problematic language that would render it invalid, unworkable, and unenforceable. The current language of HB 419 HD2 SD1 violates two federal laws: (1) the federal Communications Decency Act, 47 U.S.C. § 230 (“*Section 230*”) and (2) the Stored Communications Act, 18 U.S.C. Chapter 121 §§ 2701-2712 (the “*SCA*”). Section 230 and the SCA are two laws which provide vital protections that ensure a free and open internet. HB 419 HD2 SD1 is therefore preempted by these federal laws, and would thus be unenforceable if passed.

Section 230 of the Communications Decency Act

Although a state may regulate in various areas, it must do so in a manner that does not conflict with federal law. Section 230 is considered the cornerstone of the legal framework that has allowed the internet to thrive, and it “protects websites from liability for material posted on the website by someone else.” *Doe v. Internet Brands, Inc.*, No 12-56638, 2016 WL 3067995, at *3 (9th Cir. May 31, 2016). It does so through two key provisions. First, “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1). Second, “[n]o liability may be imposed under any State or local law that is inconsistent with this section.” *Id.* at § 230(e)(3). As the United States District Court for the District of Hawaii observed, “so long as a third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific editing or selection process.” *Sulla v. Horowitz*, No. CIV. 12-00449 SOM, 2012 WL 4758163, at *2 (D. Haw. Oct. 4, 2012) (quoting *Carafano v. Metroplash.com, Inc.*, 339 F.3d 1119, 1124 (9th Cir. 2003)).

Accordingly, courts across the country have regularly found that Section 230 preempts state laws that attempt to hold websites liable for third-party content. *See e.g., Backpage.com, LLC v. McKenna*, 881 F.Supp.2d 1262, 1273 (W.D. Wash. 2012). Section 230 also protects websites from being forced to screen or otherwise verify third-party content. *See, e.g., Doe v. Friendfinder Network, Inc.*, 540 F.Supp.2d 288, 295 (D.N.H. 2008) (Section 230 “bars the plaintiff’s claims that the defendants acted wrongfully by ... failing to verify that the profile corresponded to the submitter’s true identity.”); *Doe v. MySpace, Inc.*, 474 F.Supp.2d 843, 850 (W.D. Tex. 2007) (finding that Section 230 barred claims that MySpace was liable for policies relating to age verification); *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1180 (9th Cir. 2008) (“webhosts are immune from liability for ... efforts to verify the truth of” third-party statements posted on the website); *Prickett v. InfoUSA, Inc.*, 561 F.Supp.2d 646, 651 (E.D. Tex. 2006) (“The Plaintiffs are presumably alleging that ... the Defendant is liable for failing to verify the accuracy of the content. Any such claim by the Plaintiffs necessarily treats the Defendant as ‘publisher’ of the content and is therefore barred by § 230.”); *Mazur v. eBay Inc.*, No. CIV 07-3967 MHP, 2008 WL 618998, at *9 (N.D. Cal. Mar. 4, 2008).

The Stored Communications Act

In 1986, Congress enacted the SCA, 18 U.S.C. Chapter 121 §§ 2701-2712, to give persons using internet platforms statutory protection, similar to the Fourth Amendment of the U.S. Constitution, against access by the government to stored electronic private information held by those internet platforms, without due process such as a search warrant. Orin S. Kerr, *A User’s Guide to the Stored Communications Act, and a Legislator’s Guide to Amending It*, 72 GEO. WASH. L. REV. 1208, 1209-13 (2004). The SCA limits the government’s ability to compel internet platforms to disclose information in their possession about their users, and limits the internet platform’s ability to voluntarily disclose information about their users to the government, absent a subpoena, warrant, or court order. The SCA contains both criminal and civil penalties for

violations. Numerous courts have held that the SCA applies to internet platforms and websites. *See e.g., Brown Jordan Int'l Inc. v. Carmicle*, 846 F.3d 1167 (11th Cir. 2017); *Crispin v. Christian Audiger, Inc.*, 717 F.Supp.2d (C.D. Cal. 2010); *Campbell v. Facebook, Inc.*, 315 F.R.D. 250 (N.D. Cal. 2016).

In a recent example, a federal judge restricted the city of Portland from enforcing some of its lodgings tax regulations against HomeAway, a vacation rental website. *Homeaway.com, Inc. v. City of Portland*, Civ. No. 3:17-cv-00091-PK, (D. OR. Mar. 27, 2011). That case involved regulations by the city of Portland which required HomeAway to provide information to the city – including customer names, listings, and rental addresses, and potentially lengths and prices of stays arranged through its website – without a subpoena or other legal process. U.S. District Judge Michael W. Mosman ruled that significant portions of the regulations would violate the SCA. *See* http://www.oregonlive.com/portland/index.ssf/2017/03/post_588.html.

HB 419 HD2 SD1 impermissibly violates Section 230

HB 419 HD2 SD1 violates Section 230 because it seeks to make hosting platforms responsible for the content and veracity of information provided by its users. At the core of Section 230's protections is the idea that hosting platforms cannot be held responsible for the content provided by their users and cannot be required to verify such information. HB 419 HD2 SD1 has provisions that violate these federal protections by seeking to penalize hosting platforms for the content provided by users and for not verifying the accuracy of that content. First, HB 419 HD2 SD1 makes hosting platforms responsible for the content included in advertisements prepared by users. Proposed §§ 237D-4(c) and (d) of Subpart B HOSTING PLATFORM LIABILITY, TRANSIENT ACCOMMODATIONS INDUSTRY state:

(c) *Any advertisement, including an online advertisement, for any transient accommodation or resort time share vacation interest, plan, or unit shall conspicuously provide:*

(1) The operator or plan manager's *transient accommodations tax registration identification number*;

(2) The local contact's name, phone number, and electronic mail address, provided that this paragraph shall be considered satisfied if this information is provided to the transient or occupant prior to the furnishing of the transient accommodation or resort time share vacation unit; and

(3) The *applicable land use permit or registration identification number* of each advertised unit as provided by the county having jurisdiction.

Upon notice that the property is not in compliance with state law or county ordinance, an operator or plan manager shall remove the transient accommodations unit advertisement.

(d) *Failure to meet the requirements of subsection (c) shall be unlawful.* (Emphasis added).

Sections 237D-4(c) and (d) make hosting platforms require users to include certain content in every advertisement. Although hosting platforms are not specifically enumerated as persons subject to a citation, the entire section is titled “Hosting Platform Liability” and any advertisement that does not comply with the statute is “unlawful”. In other words, hosting platforms who conduct business with operators and plan managers are potentially subject to penalties for allowing the posting of advertisements that do not contain certain required content. This violates Section 230. See *Internet Brands, Inc.*, No. 12-56638, 2016 WL 3067995, at *3 (noting that Section 230 “protects websites from liability for material posted on the website by someone else”). In addition to making hosting platforms responsible for the content of the required information in advertisements, these sections further require hosting platforms to ensure that the information provided by their users is correct. See *Fair Hous. Council of San Fernando Valley*, 521 F.3d at 1180 (“webhosts are immune from liability for ... efforts to verify the truth of” third-party statements posted on the website); *Prickett*, 561 F.Supp.2d at 651 (noting that claims treating hosting platforms “as ‘publisher’ of the content” is barred by § 230.”); *Horowitz*, No. CIV. 12-00449 SOM, 2012 WL 4758163, at *2 (“so long as a third party willingly provides the essential published content, the interactive service provider receives full immunity”). In short, because §§ 237D-4(c) and (d) make certain types of advertisements posted on a hosting platform’s website unlawful, these provisions clearly violate Section 230.

Additionally, §§ 237__(i) and 237D__(i) of Sections 8 and 9 of Subpart C attempt to hold hosting platforms liable for content provided by its users. Section 237 __ (i) of Section 8 of Subpart C states that:

(i) When conducting business with an operator or plan manager with respect to a property for lease or rent, *transient accommodations brokers, hosting platforms, and booking services shall:*

...

(2) *Require the operator or plan manager to provide the transient accommodations broker, hosting platform, or booking service with the operator[’s] or plan manager’s transient accommodations registration identification tax identification number and local contact information and shall notify the operator or plan manager that this information is required in advertisements for transient accommodations or resort time share vacation interests, plans, or units under section 237D-4;*

(3) *Require the operator or plan manager to provide the transient accommodation broker, hosting platform, and booking service with the county non-conforming use registration number, or other unit-specific transient accommodation registration number as issued by the appropriate county agency, and verification of compliance with state and county land use laws in the form of a written certification, verification, or permit, as applicable, issued by the appropriate county agency; and*

(4) *Require the operator or plan manager to provide any other information as may be required by rulemaking. (Emphasis added.)*

Section 237D__ (i) of Section 9 of Subpart C has minor variations to Section 237__ (i) of Section 8 of Subpart C and states:

(i) When conducting business with an operator or plan manager with respect to a property for lease or rent, *transient accommodations brokers, hosting platforms, and booking services shall:*

...

(2) *Require the operator or plan manager to provide the transient accommodations broker, hosting platform, or booking service with the operator['s] or plan manager's transient accommodations registration identification tax registration identification number and local contact information and shall notify the operator or plan manager that this information is required in advertisements for transient accommodations or resort time share vacation interests, plans, or units under section 237D-4;*

(3) *Require the operator or plan manager to provide the transient accommodation broker, with verification of compliance with state land use laws and county land use ordinances in the form of a written certification, verification, or permit, as applicable, issued by the appropriate county agency; and*

(4) *Require the operator or plan manager to provide a statement to the transient accommodations broker confirming compliance with all land use laws and ordinances; and*

(5) *Require the operator or plan manager to provide any other information as may be required by rulemaking. (Emphasis added.)*

The intent of these provisions is clear. The State wants to create a system whereby the hosting platforms are required to ensure that their users are complying with state laws and county ordinances. However, because Section 230 prohibits internet platforms from being liable for requiring specific content or verification of the information voluntarily provided by their users, these provisions are preempted and invalid. § 237-_(i) and § 237D-_(i) create liability for hosting platforms in the event that: (1) the hosting platform did not satisfy the requirements under this section by verifying certain user-provided information, or (2) the user provided wrong, or faulty, or incorrect information to the hosting platform. Under either set of circumstances, Section 230 clearly prohibits the state government from seeking to hold hosting platforms liable due to the acts and/or statements of its users. Furthermore, the requirements in these provisions seek to put the hosting platforms into the role of being police, judge, and jury for compliance with local land use law. That is not the proper role of hosting platforms, and Section 230 prohibits the State from imposing that role upon them.

HB 419 HD2 SD1 impermissibly violates the SCA.

HB 419 HD2 SD1 violates the SCA by requiring that hosting platforms make a number of disclosures to the state and/or counties. Sections §§ 237-__(g) and 237D-__(g) of Sections 8 and 9 of Subpart C provide that:

(g) A registered tax collection agent shall file periodic returns in accordance with section 237-30 [237D-6] and annual returns in accordance with section 237-33 [237D-7]. Each periodic return required under section 237-30 [237D-6] shall be accompanied by an electronic cover sheet, in a form prescribed by the department that includes the following information:

(1) For each operator and plan manager on whose behalf the tax collection agent is required to report, collect, and pay over taxes due under this chapter, the operator's or plan manager's name, address, and general excise tax license number [transient accommodations registration identification number]; and

(2) For each transient accommodation rented through the registered tax collection agent or the website or hosting platform designated in the certificate of registration issued pursuant to chapter 237D [subsection (a)], for which taxes are being remitted pursuant to this chapter:

(A) The address of the transient accommodation;

(B) The number of nights that each transient accommodation was rented and the rate or price at which each transient accommodation was rented; and

(C) The amount of tax being remitted pursuant to this chapter and the amount of any federal form 1099 income that was derived from each transient accommodation.

Upon request by the planning director or mayor of the applicable county, a registered tax collection agent shall disclose any of the information contained in the returns or cover sheets required by this subsection to the planning director or any county official designated by the mayor to receive the information. Notwithstanding any law to the contrary, including section 237-34 [237D-13], the planning director and county official designated to receive the information pursuant to this subsection may examine and copy the returns and cover sheets to ensure compliance with this section, state and county tax laws and ordinances, and any applicable land use laws and ordinances. (Emphasis added.)

These provisions clearly violate the SCA. Without a subpoena or other form of due process, HB 419 HD2 SD1 requires hosting platforms to disclose their users' private tax information to county officials for non-tax purposes (address, number of rental nights, rates, etc.). The SCA prohibits hosting platforms from disclosing some of the information required under HB 419 HD2 SD1 without due process. Accordingly, these provisions require hosting platforms, without any form of due process, to provide the counties with information about its users. *See Goo Yee*, 21 Haw. at 517 (stating "that contracts ... which contemplate the performance of that which is either *malum in se*, or prohibited by some positive statute, are void"). In other words, these provisions require hosting platforms to turn over private information of its users in violation of the SCA.

On top of the SCA violations, these provisions also violate the protections to privacy afforded by the Fourth Amendment of the U.S. Constitution and Article I, Section 7 of the Hawaii Constitution by requiring hosting platforms to turn over personal information of their users to the government without due process. Article I, section 7 of the Hawaii Constitution "expressly guarantees the right to privacy [and] protects people from unreasonable government intrusions into their legitimate expectations of privacy." *State v. Navas*, 81 Haw. 113, 122, 913 P.2d 39, 48 (1996) (noting that Article I, section 7 of the Hawaii Constitution "provides Hawaii's citizens greater protection against unreasonable searches and seizure than the United States Constitution"). Further, the Fourth Amendment¹ of the U.S. Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]"

¹ Because Article I, Section 7 of the Hawaii State Constitution largely tracks the language of the Fourth Amendment, and because Article I, Section 7 affords even greater protections than the Fourth Amendment, discussions of the Fourth Amendment is also applicable to Article I, Section 7 of the Hawaii State Constitution. *See State v. Curtis*, 139 Hawaii 486, 497, 394 P.3d 716, 727 (2017) ("We have often recognized broader protections '[i]n the area of searches and seizures under article I, section 7' than our federal counterparts").

The right to privacy in both state and federal law protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]” The U.S. Supreme Court has held that “searches conducted outside the judicial process, without prior approval by a judge or a magistrate judge are *per se* unreasonable ... subject only to a few specifically established and well-delineated exceptions.” *City of Los Angeles, Calif. v. Patel*, 135 S.Ct. 2443, 2452 (2015). Here, §§ 237-__ (g) and 237D-__ (g) of Sections 8 and 9 of Subpart C require hosting platforms such as Airbnb to provide private information of their users to the state and/or counties of Hawaii without due process. Thus, these provisions of HB 419 HD2 SD1 violate the constitutional right to privacy and are unenforceable.

Conclusion

For the foregoing reasons, the problematic language of HB 419 HD2 SD1 renders it invalid, or at the least, completely unworkable for hosting platforms. We therefore urge that HB 419 HD2 SD1 be held. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David M. Louie', with a stylized flourish extending to the right.

DAVID M. LOUIE

for

KOBAYASHI, SUGITA & GODA, LLP

HB-419-SD-1

Submitted on: 4/1/2019 2:46:57 PM

Testimony for WAM on 4/3/2019 10:20:00 AM

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

Comments:

I oppose HB 419 in this form. Please reconsider not raising the taxes on homeowners that do home share to pay bills and send children to college.

Thank you.

HB-419-SD-1

Submitted on: 4/1/2019 2:47:50 PM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jordan Moniuszko	Individual	Oppose	No

Comments:

Rather than wasting time and taxpayer money engaging in litigation with corporations with more resources than the State, the State should engage with those corporations to agree on a method to remit taxes without violating privacy laws. Stop wasting time and pass a legislation to allow corporations to self remit taxes in a way they find acceptable. It's that simple. I oppose the State aiming to enter into expensive litigation to try to make a multinational corporation conform to newly passed local legislation. Fines are irrelevant and unenforceable with current State resources. Counties are moving in the right direction to regulate the industry and impose fines with the resources they have.

HB-419-SD-1

Submitted on: 4/1/2019 3:02:36 PM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Cindy Nawilis	Individual	Oppose	No

Comments:

I oppose HB419 HD2 SD1.

It is disappointing that in the pursuit of trying to regulate online vacation rental platforms like Airbnb, the state of Hawaii does not protect the interest of its residents. I understand that the state has tried to be supportive of residents that want to share their home legally with visitors for extra income, but the state has yet to take any action that demonstrates such support. If anything, the actions that the state has taken tells me otherwise. For example, this bill would basically be a means for the state to start cataloguing which residents are living full time in their home outside of a resort area, but occasionally rents out a room in their house to generate extra income. Once catalogued, the bill would also allow the state to impose fines on identified residents and take away their right to rent out a room in their house through enforcement of land use laws. This is unfair, potentially unlawful, and makes me think the state favors hotel and resort industry over residents. The affected residents are simply trying to increase their means for living on this wonderful state, whom I would bet are willing to pay taxes if it means they can continue making ends meet to stay in Hawaii. It is unnecessary to put them in the crosshairs when the real issues (eg. lack of affordable housing, hotel & resort lobbying) are out of their control.

I fully trust that the state can work out a better solution than HB419 HD2 SD1 that would still meet the state's targets and objectives without hurting a segment of its constituents.

HB-419-SD-1

Submitted on: 4/1/2019 3:35:31 PM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Aliene Elkins	Individual	Oppose	No

Comments:

Dear Chairs, Vice-Chairs, and Members of the Joint Committee:

I strongly opposed bill HB419.

While I am in favor of Allowing services like AirBNB to collect taxes and remit accommodation as well as general excise taxes, I believe there are more effective and fair ways to accomplish this goal other than HB419.

HB419 does not allow for hosts to share their homes legally.

HB419 penalizes unfairly and with excessive fines

I believe that HB419 will have a negative impact on the State's economy for tourism, as people will not be able to rent larger homes and keep their family or groups under one roof

I believe that HB419 will violate other Federal Laws and therefore AirBNB would not collect the taxes. This does not achieve the desired result of collecting the taxes.

Sincerely yours,

Aliene Elkins

HB-419-SD-1

Submitted on: 4/1/2019 3:58:39 PM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kristina Kennedy	Individual	Oppose	No

Comments:

I strongly oppose Bill # HB419.

I believe that HB419 will violate other Federal Laws and therefore AirBNB would not collect the taxes. This bill requires unlawful conveyance of information and therefore Aibnb will not effectively collect the taxes

I believe that HB419 will have not only a negative impact on the State's economy for tourism but will also sour tourist for traveling to Hawaii for Vacation. With ut the use of Hawaii homes, vacationers will not be able to rent larger properties for family reunions or weddings or group events. I believe it will hurt the wedding industry, participation in sporting events or tournaments, races, golf tournaments, and an overall decline in tourism.

The penalties for homeowners with Bill HB419 are unfair and excessive and would not allow homeowners in Hawaii to share their homes legally

Sincerely yours,

Kristina Kennedy

HB-419-SD-1

Submitted on: 4/2/2019 3:11:44 AM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dan Carpenter	Individual	Oppose	No

Comments:

This bill is only 1/2 good. Letting AirBnB collect taxes is good. Disclosing Rentors personal information is bad.

HB-419-SD-1

Submitted on: 4/1/2019 5:05:18 PM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Catherine Susan Graham	Individual	Comments	Yes

Comments:

Aloha, Chair Dela Cruz and Committee Members,

I support allowing Airbnb to collect appropriate taxes and turning them over to the state. I naively but firmly believe in trusting them to do so equitably without demanding that they turn over lots of info on the hosts that may be illegal and unconstitutional.

I am a renter. When my son left for college and I couldn't find a long term renter I turned to Airbnb to help pay the rent. Not only was I able to cover the rent but I met wonder people from all over the world that are now my friends - most of whom were solo travelers and really appreciated having someone here in Honolulu who could keep track of them while they were here. Hotels don't have any kind of personal relationship with their guests. Staying in hotels as a solo traveler can be very lonely. But I digress.

Hawaii needs the income - for housing, education etc. Don't be so distrustful. Just allow the home share platforms to collect the taxes.

thank you for listening.

HB-419-SD-1

Submitted on: 4/2/2019 8:55:01 AM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Brazwell	Individual	Oppose	No

Comments:

HB-419-SD-1

Submitted on: 4/1/2019 3:45:20 PM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaitlin Kennedy	Individual	Oppose	No

Comments:

Dear Chairs, Vice-Chairs, and Members of the Joint Committee:

I strongly opposed bill HB419.

I believe that HB419 will have a negative impact on the State's economy for tourism, as people will turn to other tropical vacation destinations where they can have large family or group accommodations.

Also, HB419 penalizes home owners very unreasonably and the fines are excessive.

This bill does not allow the Hawaii Homeowners to share their homes and their investments legally

There are other ways to Allow services like AirBNB to collect taxes and remit accommodation as well as general excise taxes, but this bill, HB419, is not a good mechanism and has too much controversy..

Respectfully yours,

Kaitlin Kennedy

AIRBNB TESTIMONY

- Aloha, I am Normadeene Musick
- Mahalo for giving me the chance to testify on the bill about home sharing and B&B homes.
- I support the intent of this proposal with modifications
- I am a native Hawaiian homeowner and a retired educator with Univ. of HI
- My family pooled our money 50 years ago and bought an ohana style home in Honolulu.
- Since then, my oldest sister and my husband have died and I now care for my other sister who has alzheimers with the added costs
- To make up for the lost income that is necessary to cover the spiraling costs of repairs, real property taxes and insurance, I have opened my home to AirBnB guests
- Half are international and half are from the states
- It has been fun, educational and informative sharing my home with so many interesting people
- They all enjoy their time in Hawaii, spend a lot money, and hope to come back
- A quote from a guest's evaluation:

An amazing home, an amazing host. Great space for getting just a bit out of the city, and yet close enough to downtown quickly. The views from Deenie's are incredible. Breakfast, nice touches like snacks and drinks, warm and friendly atmosphere. Feels like home with Deenie, and yet lots of privacy as needed.
- I would like to work together on sensible legislation that is fair to us

HB-419-SD-1

Submitted on: 4/1/2019 8:07:51 PM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carey Usher	Individual	Oppose	No

Comments:

This bill is too strict and punishes local residents who are using AirBnb to be able to afford to live in Hawai'i.

HB-419-SD-1

Submitted on: 4/2/2019 10:32:20 AM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael L Quisenberry	Individual	Oppose	No

Comments:

Short term renting helps locals stay in Hawaii

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

COMMITTEE ON WAYS AND MEANS

Charles C. Frost & Janice Grow-Maienza
1512 Halekoa Drive
Honolulu, HI 96821
(207) 641-7199

Wednesday, April 3, 2019

OPPOSITION -- HB419 HD2 SD1, RELATING TO TRANSIENT ACCOMMODATIONS

Aloha Honorable Chair, Vice Chair and Committee Members:

We urge you to take a broad view of community interests as you consider HB419. Our obsolete accommodations laws certainly need to be brought in line with modern booking technology, but this needs to be done in a fair, reasonable and businesslike manner.

My wife Janice Grow-Maienza and I have operated a short-term rental small business at our home since retiring from university teaching in 2013. We are empty-nesters living in an ohana apartment at street level, renting out the lower floors and pool house when not occupied by visiting family members. Our General Excise Tax registration is prominently displayed in the office of the rental spaces.

For the past five years we have hosted groups of 6-8 nursing students from a Canadian university, who use our facilities as dormitory and classroom while learning the philosophy and methods of native Hawaiian healing arts. We have also hosted several small teams of technicians who are assigned to Honolulu for short-term work projects. Groups like these prefer a home setting where they can do their own cooking.

We engage local pool maintenance, cleaning and landscaping services on a regular basis, as well as carpenters, painters and tree surgeons when needed.

We have been at pains to avoid noise and traffic problems for our neighbors. Our guests have been quiet. The nursing students and their professor use public transportation to the school clinics that they serve.

We rent less than 12 times a year. We pay the General Excise and Transient Accommodation taxes ourselves and are in good standing with the Department of Taxation. We understand that the transient accommodations industry accounts for about \$5 billion in our economy. The State of Hawaii and its subdivisions need the tax revenue that this rental activity generates.

We welcome registration and reasonable regulation. Laws that are unnecessarily punitive and restrictive would substantially reduce the contribution that accommodations operators are making to the state's economy. Such ill-considered laws would also have a serious impact on us personally. Supplemental rental income enables us to meet sizable fixed costs and stay in our home in retirement.

Mahalo for this opportunity to testify.

/s/ Charles C. Frost

HB-419-SD-1

Submitted on: 4/2/2019 7:59:02 AM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Abraham Aiona	Individual	Oppose	No

Comments:

If the county can regulate vacation rentals and also separate Homeowner live on property from investor only properties that would be a way to go. Most of us do rentals just to be able to pass on our homes to our children.

Mahalo,

Abraham Aiona

Retired Firefighter, Waimanalo

HB-419-SD-1

Submitted on: 4/2/2019 7:48:22 AM

Testimony for WAM on 4/3/2019 10:20:00 AM

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

Comments:

We believe there are fair ways to regulate short-term rentals to address community concerns, but this bill is not the way

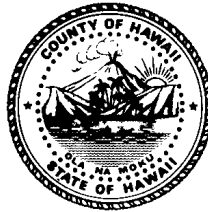
- High fines and unfair penalties
- No protection for hosts attempting to share their homes legally
- A negative impact on the State's economy
- Would require data sharing that may violate federal law, including but not limited to sharing personally identifiable information of hosts with State & County Officials
- Due to the above concerns, our host platform would not collect taxes under this bill

We collect and pay our State & Transient Taxes and are happy to allow our online platform to do this for us, but this bill has too many flaws to allow it to pass as written.

Mahalo

Brian & Donna Lecompte

Harry Kim
Mayor



LATE

Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553
KONA: 74-5044 Ane Keohokālole Hwy., Bldg C • Kailua-Kona, Hawai'i 96740
(808) 323-4444 • Fax (808) 323-4440

April 2, 2019

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Committee on Ways and Means

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

RE: HB 419, HD2,SD1 Relating to TAT

Thank you for this opportunity to comment on Part I of HB 419, HD2, SD1, offering the counties an unidentified amount to enforce "all applicable laws and ordinances relating to transient accommodations."

We appreciate the motivation behind Part I of this bill, which is to provide the counties with needed support in our efforts to contain the growing conversion of residential dwellings into commercial short term vacation rentals. We also appreciate the changes that have been made from last year's bill (HB 2605). Moreover, given our county's financial difficulties, it is hard not to support an opportunity to acquire a substantial sum (\$1M for each county in earlier versions of the bill). However, the bill raises a number of concerns.

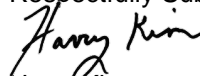
We think a better approach would be simply to appropriate \$1M to each county to assist in enforcement of all applicable laws and ordinances relating to transient accommodations. Hopefully, you will agree that that would be a more traditional approach, and a recognition of a partnership between two responsible and mutually-respectful levels of government.

Whatever approach is taken, we think that an important omission from the bill is the lack of a requirement that the Department of Taxation share data with the counties. Under present law, all data go to DoTax, so without a provision mandating the sharing of the information, it is unclear how the counties can reconcile their data (who's operating STVRs) with what State has, and accomplish the enforcement of laws and ordinances that the bill intends.

With respect to specific requirements in this bill, we would note the following:

1. We do not have a current vacation rental permit or specific appeal process for it, so we would have to design a system that would fit the criteria. Where other islands need to tweak their systems, we would have to create them and then implement. Also, we do not yet have a separate real property tax class for vacation rentals. The class cannot be created for FY 2020-- it will be for FY 2021. We may set a rate in FY 2020, but it won't be effective until 2021.
2. On Hawai'i Island, there is an existing contested case procedure for Planning Commission decisions. An appeal of a contested case goes to Third Circuit Court, where we have no control over the timelines.
3. Special permits are only for agricultural land. Consideration of "special" uses should not be expedited, especially for vacation rental-related applications. Generally, the State Land Use Commission has also held the position that overnight accommodations are not permitted on agricultural land. I would be concerned if the intent or effect of this bill is to make it easier to place vacation rentals on agricultural land.

Respectfully Submitted,


Harry Kim
MAYOR

MICHAEL P. VICTORINO
MAYOR

MICHELE CHOUTEAU MCLEAN, AICP
DIRECTOR

JORDAN E. HART
DEPUTY DIRECTOR



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA, 2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

LATE

April 2, 2019

TESTIMONY OF MICHELE CHOUTEAU MCLEAN, AICP
PLANNING DIRECTOR
COUNTY OF MAUI

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

Wednesday, April 3, 2019, 10:20 A.M.
Conference Room 211

HB419 HD2, SD1 RELATING TO TRANSIENT ACCOMMODATIONS.

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Honorable Members of the Senate Committee on Ways and Means

Thank you for this opportunity to testify in **SUPPORT** of HB419 HD2, SD1.

There are several ways to approach tax collection and land use compliance issues with transient accommodations. Maui County has been following ordinances in other municipalities that have withstood federal court challenges, namely Santa Monica, and we hope that Hawaii can adopt similar legislation.

SD1 seeks to ensure fair tax collection and land use compliance for transient accommodations. It has two critical goals that the State Department of Taxation and the respective county planning departments have been pursuing: requiring "hosting platforms" to be accountable for the payment of applicable state taxes and mandating that sufficient information is provided to the counties for enforcement purposes. These are distinct but nonetheless related objectives that SD1 would achieve.

This is important to the counties for two reasons. The first is so that we can enforce illegal operations, which is of huge concern to the majority of Maui County's residents. Many illegal operators employ tricky, underhanded, and technically sophisticated tactics to successfully avoid enforcement. To enforce, all we need is an advertisement, such as a website or listing on a hosting platform, and the physical location of the transient accommodation.

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Honorable Members of the Senate Committee on Ways and Means
April 2, 2019
Page 2

The second reason – and this does not get enough attention – is that it is important to know where these operations are for emergency purposes. A recent training session on Emergency Management procedures included Kauai County’s discussion of its April 2018 flooding and how many visitors were impacted. These visitors did not know where to go, what to do, or how to get help, and certainly did not get the local alerts. Most residents know these things or have ohana to help them. Kauai County personnel had a difficult time finding these visitors and making sure they were all safe because the vacation rentals were not permitted. Maui County’s permit requirements have either an onsite operator or a local manager who is available 24/7, as well as other safeguards, but these do not apply to the illegal operations.

In order for this bill to most effectively assist the counties in enforcement, I respectfully request the following three revisions:

On page 16, line 12, please add the following underscored language: “(3) The tax map key number and the applicable land use permit or registration identification number....”

On page 25, line 14, please add the following underscored language: “(A) The tax map key number and the address of the transient accommodation....”

On page 36, line 3, please add the following underscored language: “(A) The tax map key number and the address of the transient accommodation....”

Thank you for this opportunity to offer my support of the passage of HB419 HD2, SD1. The counties need to be able to regulate vacation rentals for the sake of our residents and our visitors. Your sincere efforts in this regard are truly appreciated.

Sincerely,

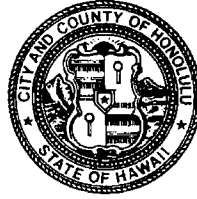
Michele Chouteau McLean, AICP
Director, Department of Planning
County of Maui

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov

LATE

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

April 3, 2019

The Honorable Donovan M. Dela Cruz, Chair
and Members of the Committee on Ways & Means
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Dela Cruz and Committee Members:

**Subject: House Bill No. 419, HD 2, SD 1
Relating to Transient Accommodations**

The Department of Planning and Permitting (DPP) **is pleased to support** House Bill No. 419, SD 1, which adds new requirements for transient accommodations under the Hawaii Department of Taxation (DoTax), and makes counties eligible for transient accommodations (TAT) revenue for the enforcement of short-term vacation rental laws.

We understand the desire to collect transient accommodations tax and general excise tax on those short-term operations that, until now, have skirted this obligation. As such, we do not object to requiring hosting platforms to become tax collection agents.

We appreciate the monetary incentive offered by Part I of the Bill for certain county regulatory measures for transient accommodation. We **support** the following provisions of the Bill:

1. Assigns the DoTax new responsibilities in administering tax obligations of transient accommodation operators and managers. We welcome this additional regulatory oversight, including the imposition of progressive fines for violations.
2. Makes it clear that the counties can adopt and enforce their own regulations related to short-term rentals.
3. Adopts regulations for the advertising of transient accommodations.
4. Allows sharing data from the DoTax with county mayors and planning departments.
5. Requires the number of nights stayed per booking be included in the reported data.

The Honorable Donovan M. Dela Cruz, Chair
and Members of the Committee on Ways & Means
Hawaii State Senate
Hawaii State Senate
House Bill No. 419, HD 2 SD1
April 3, 2019
Page 2

6. Requires a county non-conforming use certificate number or registration number, and written verification of compliance with county ordinance be provided to the transient accommodation broker, hosting platform, and/or booking service.

As you may know, the Honolulu City Council is actively reviewing an updated regulatory framework for short-term rentals. We drafted our proposal to balance the needs of our residential neighborhoods to keep them residential in character, and at the same time, recognize the need to diversify our visitor accommodation industry. Our bill offers the public more transparency, and requires more accountability from the operators of short-term rentals. We also seek to create new property tax classifications so not only can the City realize more revenue from these higher valued properties, but doing so will not allow them to elevate the property values of their neighboring properties that are in long-term use. We are hopeful that an ordinance will be adopted very soon.

We appreciate the amendments in House Bill No. 419, HD 2, SD 1, and ask that it be passed out of committee.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy Sokugawa", with a stylized, flowing script.

Kathy Sokugawa
Acting Director



LATE

Maui Hotel & Lodging

ASSOCIATION

Testimony of

Lisa H. Paulson

Executive Director

Maui Hotel & Lodging Association

on

HB419 HD2 SD1

Relating To Transient Accommodations

COMMITTEE ON WAYS AND MEANS

Wednesday, April 3, 2019, 10:20 am

Conference Room 211

Dear Chair Dela Cruz, Vice Chair Ketih-Agaran and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes 195 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 25,000 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 is **in support** of **HB419 HD2 SD1**, which Part I: Makes a county eligible to receive TAT revenue allocations for the purpose of enforcing all applicable laws and ordinances relating to transient accommodations, under specified conditions. Requires reports from counties receiving funds for enforcement of transient accommodations and short-term vacation rentals ordinances. Part II: Amends the definition of "transient accommodations" to include additional forms of transient accommodations. Requires each transient accommodations broker, hosting platform, and booking service to submit to DBEDT quarterly reports of statistical data relating to transient accommodations listings. Makes it unlawful for a hosting platform to provide, and collect a fee for, booking services regarding transient accommodations if the operator or plan manager is not registered with the Director of Taxation. Amends requirements relating to transient accommodations tax certificates of registration to ensure greater transparency. Allows a transient accommodations broker to register as a GET and TAT tax collection agent for its operators and plan managers. Takes effect on 1/1/2020.

MHLA is in support of establishing a level playing field for all visitor accommodations. There are alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, with many them likely avoiding the 10.25 percent transient accommodations and general excise taxes. This Bill would help Maui County with funding for its enforcement.

Maui County has already made significant strides in cracking down on illegal vacation rentals, including the purchase of software to research/locate illegal operators and levying stiffer fines. Additional funding from the State would aid greatly in our enforcement efforts.

Thank you for the opportunity to testify

1727-B Wili Pa Loop • Wailuku, HI 96793 • 808/244-8625 • 808/244-3094 fax • info@mauihla.org

LATE

HB-419-SD-1

Submitted on: 4/2/2019 1:49:09 PM

Testimony for WAM on 4/3/2019 10:20:00 AM

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

Comments:

Dear Sirs and Madams,

I am opposed to HB419 HD2 SD1 as currently written.

I am in favor of updating our laws to keep pace with technology and market demands. I am in favor of allowing families to rent out all or part of their homes through an online platform. However, this bill oversteps privacy issues with its reporting requirements. It also levies unnecessarily high fees and penalties, the effects of which will be to discourage business. And if alternative lodging options are not available, tourism will certainly decrease as there is simply not enough hotel rooms for everyone, and not everyone wants to stay in a hotel.

I have been following this issue through its many iterations and I'm afraid we have missed the mark again.

Mika Keaulii

LATE

Council Chair
Kelly T. King

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Riki Hokama
Alice L. Lee
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

April 2, 2019

Director of Council Services
Maria E. Zielinski

TO: The Honorable Donovan M. Dela Cruz, Chair
Senate Committee on Ways and Means

FROM: Kelly T. King
Council Chair

A handwritten signature in black ink that reads "Kelly T. King".

SUBJECT: **HEARING OF APRIL 3, 2019; TESTIMONY IN SUPPORT OF HB 419, HD2, SD1, RELATING TO TRANSIENT ACCOMMODATIONS**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to: 1) allocate TAT revenue to the counties for the purpose of enforcing all applicable laws and ordinances relating to transient accommodations, under specific conditions; 2) amend current laws and create additional requirements relating to transient accommodations; and 3) allow a transient accommodation broker to register as a GET and TAT tax collection agent for its operators and plan managers.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. The proliferation of thousands of illegal transient accommodation rentals has decreased the State's housing supply and resulted in over \$100 million in general excise tax and transient accommodation tax going uncollected.
2. Allowing a transient accommodations broker to act as collection agents will help facilitate the collection of accrued tax revenue.
3. The additional funding from TAT revenue will further aid the counties with their enforcement efforts.

For the foregoing reasons, I **support** this measure.

ocs:proj:legis:19legis:19testimony:hb419_hd2_sd1_paf19-163a_jgk



DEPARTMENT OF PLANNING
THE COUNTY OF KAUA'I

DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

KA'ĀINA S. HULL
DIRECTOR

JODI A. HIGUCHI SAYEGUSA
DEPUTY DIRECTOR

Testimony of Ka'āina Hull
Planning Director, County of Kaua'i

Before the
Senate Committee on Ways and Means

April 3, 2019; 10:20 am
Conference Room 211

In consideration of
House Bill 419 HD2 SD1
Relating to Transient Accommodations

LATE

Honorable Chair Donovan M Dela Cruz and Members of the Committee:

The County of Kaua'i, Department of Planning provides its **comments in support of HB419 HD2 SD1**, which proposes to provide counties with State funds for the purpose of enforcing all applicable laws and ordinances relating to transient accommodations if it complies with specified conditions, and includes tax collection mechanisms that also support the County's efforts to regulate illegal transient accommodations.

The County of Kaua'i has prioritized regulation of transient accommodations and short-term rentals, and nearly complies with the conditions specified in HB419 HD2 SD1. The County has prohibited transient accommodations that are located outside of the County's Visitor Destination Areas, which serves two primary purposes:

1. To address the proliferation of resort uses within our residential neighborhoods; and
2. To address Kaua'i's housing inventory crisis. Although a recent study demonstrated that approximately 1 in every 20 homes in the State is a vacation rental, 1 in every 7 homes is a vacation rental on the island of Kaua'i.

Currently, Kaua'i has approximately 4,500 unique listings for vacation rentals advertised across numerous third party hosting sites. Although a large number of these listings are located within Kaua'i's Visitor Destination Areas, we anticipate approximately 800 to 1,200 of these units to be illegally located outside of our Visitor Destination Areas. To address this problem, the County of Kaua'i has

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already invested much of its resources on regulating illegal transient accommodations. Thus, the additional support offered through HB419 HD2 SD1 is very much needed and appreciated.

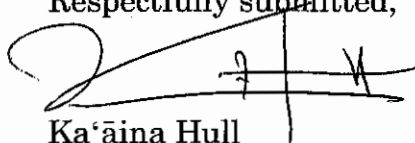
The Department is also supportive of the enforcement mechanisms imposed in Part II of HB419 HD2 SD1. The County of Kaua'i is aware of the 9th Circuit Court of Appeals decision in HomeAway.com, Inc. v. City of Santa Monica that was filed on March 13, 2019, which upheld several specific obligations of hosting platforms, including: (1) "disclosing certain listings and booking information regularly;" (2) "refraining from completing any booking transaction for properties not licensed and listed on the registry;" and (3) "refraining from collecting or receiving a fee for facilitating or providing services ancillary to a vacation rental or unregistered home-share." These obligations are similar to those obligations imposed in Part II of HB419 HD2 SD1 and are necessary to further the Department of Planning's enforcement priorities.

Alternatively, HB 419 HD2 SD1 could explicitly provide the counties with the authority under HRS Chapter 237D or HRS §46-1.5(7) to create ordinances to require hosting platforms to disclose certain listings and booking information regularly; refrain from completing any booking transaction for properties not compliant with county land use laws; and refrain from collecting or receiving a fee for facilitating or providing services ancillary to a vacation rental or unregistered home-share. Possible enabling language could read as follows:

The counties shall have the power to regulate the business activity or booking transactions of hosting platforms not in conformance with county laws.

As the 9th Circuit stated in HomeAway.com, Inc. v. City of Santa Monica, "[l]ike their brick-and-mortar counterparts, internet companies must also comply with any number of local regulations concerning, for example, employment, tax, or zoning." Thus, these important obligations are required to prevent "a lawless no-man's-land on the Internet" at the expense of preserving our housing stock and quality and character of our residential neighborhoods for future generations to come.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ka'aina Hull', is written over a horizontal line. The signature is stylized with a large initial 'K' and a long horizontal stroke.

Ka'aina Hull

Director of Planning, County of Kaua'i



Testimony of

Mufi Hannemann
President & CEO
Hawai'i Lodging & Tourism Association

Senate Committee on
Ways and Means

House Bill 419 HD2 SD1: Relating to Transient Accommodations

Chair Dela Cruz and members of the Committee:

Mahalo for the opportunity to offer this testimony on behalf of the Hawai'i Lodging & Tourism Association, the largest private sector visitor industry organization in the state with 700 members, 170 of which are hotels managing 51,000 rooms and nearly 40,000 employees.

The HLTA supports this measure and any sound legislation that seeks to establish a fair, level playing field to ensure transparency, enforcement, and accountability among the online transient vacation rentals (TVRs) and traditional bricks-and-mortar lodgings.

There are an estimated 23,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, except that the majority of them are most likely avoiding proper tax registrations and county zoning laws, and are skirting our 10.25 percent Transient Accommodations Tax and the 4.0-4.5 percent General Excise Tax.

The Hawaii Attorney General revealed in a court filing on February 4, 2019, that a single online TVR service, Airbnb, admitted that its hosts have not all paid taxes. Airbnb also testified before lawmakers that it would have generated more than \$41 million in new revenue for the state in two years had it been allowed to collect and remit taxes from about 16,000 operators, who represent a fraction of the total in the islands.

As the Legislature and administration approve funding to expand our inventory of affordable housing, we as a community have been unable to successfully address the impact of proliferating TVRs on the availability of rental property. According to the Hawai'i Appleseed Center for Law and Economic Justice's TVR study, nine out of ten units are being rented as entire homes, as opposed to single rooms. Additionally, the report suggests roughly half the hosts are non-residents. By removing housing from the rental market, TVRs are only compounding such problems as a shortage of affordable housing, high real estate prices, purchases of housing units by non-residents, and already-high rents.

This issue is not about the hospitality industry versus the TVRs. Rather, this is a community issue in which illegal rentals in neighborhoods across the state are adversely affecting the quality of life for residents.

The counties of Kauaʻi, Maui, and Hawaiʻi have all enacted ordinances regulating some aspect of TVRs. In addition to the movement of their neighbor island counterparts, the Honolulu City Council is also progressing measures that take a hard look at regulating the transient vacation rental market and inserting strong land use and enforcement language. To this end, we appreciate the language in part 1 of this measure which would provide financial assistance from the State to the county governments to enforce land use and zoning laws, with the condition that the counties have implemented certain TVR enforcement and regulatory measures.

This bill will help us achieve a level playing field in regard to collecting taxes owed, provide for greater transparency and accountability for hosting platforms and their operators, and safeguard against the proliferation of illegal rentals in our communities.

Thank you.

LATE

HB-419-SD-1

Submitted on: 4/2/2019 9:51:06 PM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
gina letourneur	Individual	Oppose	No

Comments:

I oppose this bill strongly. It violates my rights and is unfair.

From: [GRAND](#)
To: [WAM Testimony](#)
Subject: No on HB419
Date: Tuesday, April 2, 2019 6:32:04 PM

PLEASE: There are fair ways to regulate short-term rentals to address community concerns, but this bill is not the way. We ask you not to pass this bill but work of fair regulations that we so need and pleaded towards for decades.

G Rand

From: [Susan Phillips](#)
To: [WAM Testimony](#)
Subject: Oppose HB419 HD2 SD1
Date: Tuesday, April 2, 2019 1:52:46 PM

We support Airbnb's position regarding this bill. Tax collection is critical to everyone's economy. Airbnb has demonstrated worldwide that it can be done without infringing on privacy. I oppose this bill.

Susan Phillips
808-262-9626

From: [Susan Bootsma](#)
To: [WAM Testimony](#)
Subject: HB419 - I Oppose this Bill
Date: Tuesday, April 2, 2019 9:19:21 AM

Dear Chairs, Vice-Chairs, and Members of the Joint Committee:

I wanted to take the opportunity to share my concerns regarding HB 419, HD2, SD1 Proposed. Airbnb, as well as myself as a homeowner, is committed to helping the state solve the long-standing problem of efficiently and accurately collecting taxes from the short-term rental industry in Hawaii. Airbnb collects and remits taxes on behalf of hosts in more than 400 jurisdictions globally, generating more than \$1 billion in hotel and tourist taxes to date, helping cities, states, and our host community around the globe. Our experience in tax collection and remittance can greatly benefit Hawaii by streamlining compliance for the state and removing burdens from hard-working Hawaii residents who share their homes. We are committed to being a good partner to the state and support the legislature's effort to allow short-term rental platforms to collect and remit taxes on behalf of their users. Unfortunately, while HB 419, HD2, SD1 Proposed allows platforms to collect and remit taxes on behalf of hosts, the measure only allows them to do so under onerous and unacceptable conditions and which may conflict with federal law. Because of this, Airbnb can not agree to voluntarily collect and remit taxes under this bill as currently drafted, and we oppose this bill.

- High fines and unfair penalties
- No protection for hosts attempting to share their homes legally
- A negative impact on the State's economy
- Would require data sharing that is invasive and unnecessary and quite possibly inappropriate.
- Due to the above concerns, Airbnb would not collect taxes under this bill

Regards, Gratitude and Sincerity,

Susan Bebb

From: [David Herrmann](#)
To: [WAM Testimony](#)
Subject: Oppose HB 419
Date: Tuesday, April 2, 2019 6:35:17 AM

Aloha!

DO NOT PASS BILL HB 419. We are strongly opposed to the extreme measures it takes, as it will have significant negative ramifications on local homeowners, local economy, taxes, and tourism, as well as all industries directly correlated to tourism such as airlines, rental cars, restaurants, stores, . . .

We agree there should be regulations and approval processes to allow local families to share their home. There should be a way to have taxes collected via on-line process for vacation rentals, but the current bill in requesting private data from hosting platforms and unfair penalties, and would only cause unnecessary lawsuits and delays in implementing a tax collection process.

Why create barriers to collecting taxes? Work with local rental property hosts, local businesses, and residents to find a solution which accommodates all the various interests to collect these taxes.

The State of Hawaii is losing out on significant taxes revenue by not creating a simple means to collect when future guests book properties.

Please don't pass the current HB419, it will only benefit the lawyers who will have this draw out in court, not the tax payers, residents, visitors, nor any of the areas which would benefit from the collected taxes.

Mahalo for your time!

David Herrmann

From: [Terry Elkins](#)
To: [WAM Testimony](#)
Subject: HB419HD2SD1
Date: Tuesday, April 2, 2019 2:28:57 AM

I respectfully oppose the new legislation as written. Anytime data is shared that might infringe on citizens personal identities it is very upsetting to me. It is a slippery slope that is worrisome in this day of identity theft which has grown in this country over the years.

Why would anyone want to vote for a bill that in the long run will hurt the states economy and unfairly penalize with high fines and other penalties those just trying to legally thare their homes.

We live in the home of the free and the brave. Let freedom prevail!!

Thank you,

Terry Elkins
10139 Briar Drive
Houston,TX 77042

Terry Elkins
Christway Counseling Center
Marriage Coach
TElkins511@gmail.com
832-622-4934

From: [Antonette Nahoopii](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Tuesday, April 2, 2019 12:24:25 AM

I oppose bill HB419. I believe we should have a fair amount taxes, so we can continue living here. We also should have our rights to our privacy.

With today's technology, we should be able to work together to make it Pono, for everyone.

Sincerely Antonette Nahoopii
Sent from my iPad

From: [Jane Bargiel](#)
To: [WAM Testimony](#)
Subject: Opposition to HB419
Date: Monday, April 1, 2019 10:43:03 PM

To whom it may concern,

As a resident of Kailua, I am strongly opposed to HB419 because it imposes unfair fines and penalties on residents who choose to share their homes for extra income. Home sharing is a boon to the economy in Kailua and provides customers to the many small business that have recently sprung up in Kailua. Home sharing could also be a great source of tax revenue that could support schools and community projects. Home sharing encourages neighborhood beautification and home upkeep. An example of a beautiful state that thrives because of the bed and breakfast industry is Vermont. Vermont has retained its natural beauty and the small towns are neat and well maintained because the bed and breakfast depends on this to attract visitors. The same benefits of B and B's could be transformative in many of the less economically advantaged areas of Oahu as well.

Sincerely,
Jane Bargiel

From: [Deenie Musick](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 10:31:11 PM
Attachments: [AIRBNB TESTIMONY.docx](#)

I am submitting my testimony for HB419.

Mahalo,

Deenie Musick

cell: 352-1490

"Life is more than just breathing. Real living is made up of moments that take your breath away."

From: wandrport@hawaiiantel.net
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 8:52:31 PM

Drastic, unfair measures to home owners.

We oppose this bill.

Wanda and Richard Porter

From: [Kenneth Middleton](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 8:42:52 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Aloha,

I adamantly oppose HB419 in its present form for the following reasons:

- No protection for hosts attempting to share their homes legally
- A negative impact on the State's economy
- High fines and unfair penalties
- Would require data sharing that may violate federal law, including but not limited to sharing personally identifiable information of hosts with State & County Officials

Please go back to the drawing board and table this. Thank you.
Cheers,

Capt. Ken Middleton



Direct: 808-227-4956

Fax: 808-396-5094

captken@tradewindcharters.com

www.HawaiiAshScatterings.com



From: [Hector Euredjian](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 8:42:20 PM

Aloha Ways and Means Committee Members

I am writing today to OPPOSE Bill HB419 HD2 SD1.

While I am in favor of reasonable regulations for Vacation Rentals I truly believe that it would be a grave mistake to approve Bill HB419 HD2 SD1.

There are no protections for hosts that attempt to share homes legally. The fines and penalties seem unfair and extremely high. The complexity of the law will totally discourage the participation of those willing to rent their properties short term and have no intention of renting them long term even for those that have properties in Resort zoned areas what in turn will result in a huge loss of revenue for our State and for what I understand it may even prompt online booking companies to avoid Hawaii altogether.

I have been a part of the visitor industry most of my life and saw countless millions of dollars being spent trying to attract visitors. Now we have multi billion dollar companies that are doing that work for us and instead of working with them we seem to be trying to kick them in the gut.

The increase in the number of visitors and revenue we have seen the last 6 years has nothing to do with a good job our Tourism promotional institutions have done, it has been plain and simple what the Internet and these online companies were able to do plus the hard work of thousands of your fellow Hawaii residents, vacation rental owners, that allowed these "golden eggs" to become real, do not over regulate and over tax the vacation rental industry because if you do so and it perishes, it can not be recovered.

Thank you for your time.

Hector Euredjian

From: [Tim Shank](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 7:08:27 PM

I oppose HB419 due to the fines proposed and the lack of protections for hosts sharing their homes.

Passage of this bill would negatively impact the state's economy at this time of reduced tax revenue and increased spending.

Thank you,
Tim Shank

From: [Charles DeFrancis](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 6:58:56 PM

I am a 74 year old , 52 year resident of Manoa living in our family residence .
I am writing to express my strong objection to bill HB419 as written. My key objections are :

High fines and unfair penalties
No protection for hosts attempting to share their homes legally
A negative impact on the State's economy
Would require data sharing that may violate federal law, including but not limited to sharing personally identifiable information of hosts with State & County Officials

Due to the above concerns, Airbnb would not collect taxes under this bill .

I believe there are fair ways to regulate short-term rentals to address community concerns, but this bill is not the way.
Mahalo for your consideration ,

Charles DeFrancis

From: [Tarah Kawal](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 6:32:29 PM

I strongly oppose HB419, HD2 and SD!. This bill will hurt many Oahu residents. We live in our house and rent a room on a short term basis and we pay GET and TAT. The short term rents collected are used to help pay our mortgage as well as spend money in our local economy. Since operating the short term rental, we have been able to put this discretionary income back into our economy by hiring a contractor to do renovations in our home, dining at local restaurants and spending money on educational activities for our kids - memberships at the zoo and Bishop museum. If this bill passes, it will be a hardship to pay our mortgage and we will not have any additaionl money to spend supporting businesses in our community.

It is very difficult to live in Hawaii given the cost of living, heavy tax burden and lower salaries. We're a working class family with multiple jobs and we would love to be able to stay in Hawaii and raise our children here. Please don't pass a bill that would make it more difficult for us to live here.

--

Tarah Kawal

Cell: 808-728-9627

Email: tarah.kawal@gmail.com

From: [John Fitzmaurice](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 5:59:45 PM

Sirs/Madames,

Please vote against bill HB419, the bill is bad for the economy and Hawaii's economy will suffer. Our economy is not performing well as it is.

John Fitzmaurice
660 Akoakoa ST.
Kailua Hi
808 218 8782

From: [Cindy Eastman](#)
To: [WAM Testimony](#)
Subject: I am opposed to bill HB419 HDS SD1
Date: Monday, April 1, 2019 5:36:03 PM

-

This bill is not warranted.

The Ridiculously High fines and unfair penalties

-

There is No protection for hosts attempting to share their homes legally

-

We know this will negatively impact the states economy

-

Would require data sharing that may violate federal law, including but not limited to sharing personally identifiable information of hosts with State & County Officials

-

I am ok with ABNB collecting taxes on my behalf but I am not in agreement in sharing private identifying information. The high fines would be very unfair and would not protect me from sharing my own home legally even with paying family members.

Hawaii heritage was built on home sharing from the beginning of time- as travel moved from one area of the island to the other. It is our nature to be hosts and share our experiences as our Ohana and Aloha have the power to make this work a better place People come here and they want to be a part of something that is real. Our history and our island lifestyle is real and we should be proud to share it with others.

I am opposed to bill HB419 HD1

I am in agreement of allowing people that share and live in their own home a way to legally resigner and pay taxes on this income.

From: hartmant001@hawaii.rr.com
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 5:26:04 PM

I am in opposition to HB 419.
It imposes unfair penalties and high fines.

I don't understand why a homeowner cannot rent out a spare room to help make ends meet in our expensive state.
Why not regulate and issue permits?

This bill seems punitive and not a problem solution.

Air BnB has had success collecting taxes for other areas in the world. This bill is punitive.

Mary A Hartman

From: [Michael Garvey](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 5:01:33 PM

I strongly oppose HB419

Because of the poison pills put in this bill obviously to kill needed regulations by adding regulations that are oppressive and could be illegal federally. I

I strongly oppose the poison pill that host platforms now are required to do the work of enforcement per laws of hosting, zoning and so on. We all know this is done to cause the bill to die.

I strongly oppose not regulating and allowing hosting our home and not allowing us to do so with good and reasonable rules and for the first time in 30 years issues certificates to host!!!!

I support good regulations, such as off street parking, not interfering with the flavor of our neighborhood, and housing rulers such as quiet at 10 PM to 8 AM, I do not allow grilling, as I encourage use of our restaurants. Home hosting has supported the AirLine growth for the last 20 years, and our guest put 1.5 Billion into our economy for us regular Hawaiians. And 200 Million in taxes.

I feel like a mafia is out to cause us harm. Housing shortage is due to DP&P not issuing permits, shortage of plan reviewers for last 30 years, and ridiculous regulation. No one buys a home for a million and rents it for \$2500!!!

--

Michael Garvey
808-745-3031

From: [Kristina Kennedy](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 3:59:28 PM

I strongly oppose Bill # HB419.

I believe that HB419 will violate other Federal Laws and therefore AirBNB would not collect the taxes. This bill requires unlawful conveyance of information and therefore Aibnb will not effectively collect the taxes

I believe that HB419 will have not only a negative impact on the State's economy for tourism but will also sour tourist for traveling to Hawaii for Vacation. With ut the use of Hawaii homes, vacationers will not be able to rent larger properties for family reunions or weddings or group events. I believe it will hurt the wedding industry, participation in sporting events or tournaments, races, golf tournaments, and an overall decline in tourism.

The penalties for homeowners with Bill HB419 are unfair and excessive and would not allow homeowners in Hawaii to share their homes legally

Sincerely yours,

Kristina Kennedy



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From: [Kaitlin Kennedy](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 3:47:25 PM

Dear Committee Members,

I strongly opposed bill HB419.

I believe that HB419 will have a negative impact on the State's economy for tourism, as people will turn to other tropical vacation destinations where they can have large family or group accommodations.

Also, HB419 penalizes home owners very unreasonably and the fines are excessive.

This bill does not allow the Hawaii Homeowners to share their homes and their investments legally

There are other ways to Allow services like AirBNB to collect taxes and remit accommodation as well as general excise taxes, but this bill, HB419, is not a good mechanism and has too much controversy..

Respectfully yours,

Kaitlin Kennedy



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From: [Allison Shadday](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 3:37:15 PM

I'm writing to oppose HB419 for the following reasons. There must be a more moderate approach to regulating short term vacation rentals. This is extreme and unfair to property owners. Thank you for your consideration. Warm Regards, Allison Shadday

- High fines and unfair penalties
- No protection for hosts attempting to share their homes legally
- A negative impact on the State's economy
- Would require data sharing that may violate federal law, including but not limited to sharing personally identifiable information of hosts with State & County Officials
- Due to the above concerns, Airbnb would not collect taxes under this bill

From: [Aliene Elkins](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 3:28:00 PM

Dear Chairs, Vice-Chairs, and Members of the Joint Committee:

I strongly opposed bill HB419.

While I am in favor of Allowing services like AirBNB to collect taxes and remit accommodation as well as general excise taxes, I believe there are more effective and fair ways to accomplish this other than HB419.

HB419 does not allow for hosts to share their homes legally.
HB419 penalizes unfairly and with excessive fines

I believe that HB419 will have a negative impact on the State's economy for tourism, as people will not be able to rent larger homes and keep their family or groups under one roof

I believe that HB419 will violate other Federal Laws and therefore AirBNB would not collect the taxes. This does not achieve the desired result of collecting the taxes.

Sincerely yours,

Aliene Elkins



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From: [Cotton, Charles](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 2:46:43 PM
Attachments: [image001.png](#)

This bill is just stupid, overreaching, unfair and unconstitutional. Trash it and allow AirBNB and VRBO to collect the taxes, send a message to the counties to fix their broken rules to allow reasonable permitting of vacation rentals.

Chuck Cotton, President

iHeartMedia Hawaii

o 808.550.9213 | m 808.393.4005

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From: [Georgia Tien](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 2:39:29 PM

Tuesday March 19th, 2019

Senate Committee on Energy, Economic Development, and Tourism Senator Glenn Wakai, Chair; Senator Brian T. Taniguchi, Vice Chair

Senate Committee on Public Safety, Intergovernmental Affairs, and Military Affairs Senator Clarence K. Nishihara, Chair; Senator Glenn Wakai, Vice Chair

Wednesday March 20th, 2019, 2:50 P.M. Conference Room 414

TESTIMONY IN OPPOSITION TO HB 419, HD2, SD1 Proposed

Dear Chairs, Vice-Chairs, and Members of the Joint Committee:

On behalf of Airbnb, I wanted to take the opportunity to share our concerns regarding HB 419, HD2, SD1 Proposed. Airbnb is committed to helping the state solve the long-standing problem of efficiently and accurately collecting taxes from the short-term rental industry in Hawaii. Airbnb collects and remits taxes on behalf of hosts in more than 400 jurisdictions globally, generating more than \$1 billion in hotel and tourist taxes to date, helping cities, states, and our host community around the globe. Our experience in tax collection and remittance can greatly benefit Hawaii by streamlining compliance for the state and removing burdens from hard-working Hawaii residents who share their homes. We are committed to being a good partner to the state and support the legislature's effort to allow short-term rental platforms to collect and remit taxes on behalf of their users.

Unfortunately, while HB 419, HD2, SD1 Proposed allows platforms to collect and remit taxes on behalf of hosts, the measure only allows them to do so under onerous and unacceptable conditions and which may conflict with federal law. Because of this, Airbnb can not agree to voluntarily collect and remit taxes under this bill as currently drafted, and we oppose this bill. We have summarized our concerns below:

- To begin, let me address comments that HB 419, HD2, SD1 Proposed is akin to the ordinance in place in San Francisco. That is not accurate. HB 419, HD2, SD1 Proposed has some provisions that may appear to mirror parts of the San Francisco law, but these are just provisions lifted out of a comprehensive law

which addresses the balance of allowable use and enforcement. Renting out all or a portion of your residence in San Francisco is a fully legal activity in every corner of the city. All of our discussions with San Francisco and how it enforces its ordinance have been grounded in the fact that sharing your home is legal everywhere. This bill would in fact do just the opposite and add even more onerous fines to those sharing their own homes. Again, to equate the San Francisco law and the measure before you is not an accurate comparison.

- Additionally, the bill requires platforms, as a condition of collecting and remitting taxes, to turn over personally identifiable information for people using the platform. This is deeply problematic for a number of reasons:
 - First, this disclosure may conflict with two federal laws - the Communications Decency Act (CDA) and the Stored Communications Act (SCA) in a number of ways. The SCA governs "access to stored communications and records."¹ In order to comply with the SCA, entities like Airbnb that provide users the ability to "send or receive wire or electronic communications" and that store such communications cannot disclose user data without the appropriate process.² The SCA requires that governmental entities use an administrative subpoena to obtain basic user information (such as name, address, telephone number, and so forth), and get a court order to obtain any information more detailed than that (such as detailed rental activity).³ Testimony from Airbnb's legal counsel, David Louie, provides a detailed analysis of the bill's legal flaws.
 - Second, even if this provision did not conflict with federal law, it is wholly unnecessary to ensure accurate tax collection. Indeed, in the dozens of states where Airbnb collects transient occupancy taxes pursuant to voluntary collection agreements (VCAs), Airbnb provides, upon audit, anonymized, transaction-level detail for each booking made through the platform. Anonymized data is sufficient for both reporting and audit purposes because occupancy taxes are transaction taxes -- i.e., user personally identifiable information neither triggers tax nor is it necessary in order to collect the tax.
 - Third, many of the provisions of the bill, state level measures to enforce local legislation, have been outpaced by regulations that have been adopted in Hawaii and Honolulu counties. Late last year, Hawaii County adopted Bill 108 that sets up a registration system for vacation rentals and B&B homes. Additionally, on March 18, 2019, the Planning Committee of

1 United States v. Steiger, 318 F.3d 1039, 1047 (11th Cir. 2003).

2 18 U.S.C. §§ 2510(15), 2711(1)–(2).

3 See id. §§ 2702(a)(3), 2703(c); United States v. Davis, 785 F.3d 498, 505–06 (11th Cir. 2015) (en banc).

the Honolulu City Council adopted Bill 89 CD1 which also puts in place regulations for both TVUs and B&B homes and establishes local enforcement and registration measures. Further, the purpose of any tax bill is to help ensure the assessment, collection and payment of taxes, not to facilitate the Department of Taxation's enforcement of county land use laws. HB 419, HD2, SD1 Proposed includes problematic language such as "the planning director and county official designated to receive the information pursuant to this subsection may examine and copy the returns and cover sheets to ensure compliance with this section, state tax laws and county tax ordinances, and any applicable land use laws and ordinances." Tax payment does not impact a user's county land use liability. Taxpayer information is confidential under state law for important policy and privacy reasons, and should not be used to enforce county land use laws.

- This bill does not contemplate a fair process for regulating the industry but simply seeks to impose harsh fines for engaging in business, on an operator or plan manager who is "not in compliance with all state laws and county ordinances." Thus, an internet hosting platform may be punished with civil penalties if a person or entity with whom it does business is not in compliance with each and every applicable state tax law, traffic law, zoning ordinance, or land use law. Even if this is limited only to land use laws, HB 419, HD2, SD1 Proposed thereby seeks to make an internet hosting platform financially responsible for the content (or lack of content) of any online advertisement, and seeks to financially penalize and for the actions or inactions of other people and entities using the internet platform, not for anything that the internet platform has done. These proposed civil penalties against internet platforms are unfair and unwarranted. The bill requires operators and/or property owners to provide the Transient Accommodations Broker, including platforms, "with verification of compliance with state land use laws or county land use ordinances" when no such verification process exists at the state or local level. It asks the operators to generate evidence for which there is no uniform way to demonstrate compliance, and it asks the platforms to be responsible for verifying documents that do not currently exist and do not have a uniform standard.
- Additionally, the bill allows the Department of Taxation to impose harsh civil penalties on operators of transient accommodations. As an example, on Oahu, if a local resident lives full time in their home outside of a resort area, but occasionally rents out a room in their house to generate extra income, that local resident would potentially be subject to civil penalties with little clarity on the

process of appeal. Such a vague and open-ended penalty will only further complicate a system that is struggling to keep up with market realities.

- While there has been much discussion among legislators about allowing local residents to share their home legally, this bill does nothing to protect those activities while at the same time imposing hefty civil penalties.
- There has been no discussion of the devastating impact this bill will have on the Hawaii economy, which will be significant, hurting local residents, small businesses, and the entire Hawaii tourism industry. Hundreds of millions, if not billions, of dollars in tourist revenue could be at risk if this bill were adopted as currently proposed.

Alternative accommodations support the state's biggest industry and generate millions in annual tax revenue.

In conclusion, because the conditions for voluntarily collecting are so onerous and violate federal law, no platforms will be able to participate and thus this bill will generate zero new revenue for the state while severely negatively impacting the local economy, hurting local residents and businesses. We will continue to work with local leaders to develop common sense regulations on short-term rentals, and remain willing to work with the state to develop a path to allow us to collect and remit taxes on behalf our hosts.

Regards,

Matt Middlebrook

Head of Public Policy, Hawaii

Sent from my iPad

From: [AOL](#)
To: [WAM Testimony](#)
Subject: Hb419-OPPOSE
Date: Monday, April 1, 2019 2:36:03 PM

As a business owner who benefits from the additional business we receive from abnb guests, I am opposed to the current bill as written. I believe we can achieve the desired results for perceived problems in a bill much less draconian and one which still enables Hawaii homeowners an opportunity to help defray the high cost of living/owning real estate in Hawaii while also allowing accommodation options at different price points for visitors whom otherwise might not have opportunity to visit Hawaii (and add to our economy in the process) and/ or for those who simply cannot find conventional accommodation due to high occupancy rates.

Maria Carl

Sent from my iPhone

From: [Helen Petrovitch](#)
To: [WAM Testimony](#)
Subject: HB419
Date: Monday, April 1, 2019 2:28:58 PM

I oppose HB419 – regulation of vacations rentals is a good idea – however this bill provides for unreasonably high fines and unfair penalties. There is no protection for hosts attempting to share their homes legally. This bill will have a negative impact on the State's economy as has been seen on the neighbor islands. Importantly, it would require data sharing that may violate federal law, including but not limited to sharing personally identifiable information of hosts with State & County Officials and due to the above concerns, Airbnb would not collect taxes under this bill. Please work towards reasonable standards for vacation rentals.

Helen Petrovitch MD,
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System

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