

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS HOSTING PLATFORMS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that illegal and  
2 unregulated transient accommodations have caused detrimental  
3 impacts to the State's housing supply. Accordingly, the purpose  
4 of this Act is to allow the counties to regulate transient  
5 accommodation hosting platforms, thereby preventing further  
6 proliferation of illegal transient accommodations and preserving  
7 residential housing.

8           SECTION 2. Section 46-1.5, Hawaii Revised Statutes, is  
9 amended to read as follows:

10           "**§46-1.5 General powers and limitation of the counties.**

11 Subject to general law, each county shall have the following  
12 powers and shall be subject to the following liabilities and  
13 limitations:

14           (1) Each county shall have the power to frame and adopt a  
15 charter for its own self-government that shall  
16 establish the county executive, administrative, and  
17 legislative structure and organization, including but



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1 not limited to the method of appointment or election  
2 of officials, their duties, responsibilities, and  
3 compensation, and the terms of their office;

4 (2) Each county shall have the power to provide for and  
5 regulate the marking and lighting of all buildings and  
6 other structures that may be obstructions or hazards  
7 to aerial navigation, so far as may be necessary or  
8 proper for the protection and safeguarding of life,  
9 health, and property;

10 (3) Each county shall have the power to enforce all claims  
11 on behalf of the county and approve all lawful claims  
12 against the county, but shall be prohibited from  
13 entering into, granting, or making in any manner any  
14 contract, authorization, allowance payment, or  
15 liability contrary to the provisions of any county  
16 charter or general law;

17 (4) Each county shall have the power to make contracts and  
18 to do all things necessary and proper to carry into  
19 execution all powers vested in the county or any  
20 county officer;

21 (5) Each county shall have the power to:



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- 1 (A) Maintain channels, whether natural or artificial,  
2 including their exits to the ocean, in suitable  
3 condition to carry off storm waters;
- 4 (B) Remove from the channels, and from the shores and  
5 beaches, any debris that is likely to create an  
6 unsanitary condition or become a public nuisance;  
7 provided that, to the extent any of the foregoing  
8 work is a private responsibility, the  
9 responsibility may be enforced by the county in  
10 lieu of the work being done at public expense;
- 11 (C) Construct, acquire by gift, purchase, or by the  
12 exercise of eminent domain, reconstruct, improve,  
13 better, extend, and maintain projects or  
14 undertakings for the control of and protection  
15 against floods and flood waters, including the  
16 power to drain and rehabilitate lands already  
17 flooded;
- 18 (D) Enact zoning ordinances providing that lands  
19 deemed subject to seasonable, periodic, or  
20 occasional flooding shall not be used for  
21 residence or other purposes in a manner as to



1           endanger the health or safety of the occupants  
2           thereof, as required by the Federal Flood  
3           Insurance Act of 1956 (chapter 1025, Public Law  
4           1016); and

5           (E) Establish and charge user fees to create and  
6           maintain any stormwater management system or  
7           infrastructure;

8           (6) Each county shall have the power to exercise the power  
9           of condemnation by eminent domain when it is in the  
10          public interest to do so;

11          (7) Each county shall have the power to exercise  
12          regulatory powers over business activity as are  
13          assigned to them by chapter 445 or other general law;

14          (8) Each county shall have the power to fix the fees and  
15          charges for all official services not otherwise  
16          provided for;

17          (9) Each county shall have the power to provide by  
18          ordinance assessments for the improvement or  
19          maintenance of districts within the county;

20          (10) Except as otherwise provided, no county shall have the  
21          power to give or loan credit to, or in aid of, any



1 person or corporation, directly or indirectly, except  
2 for a public purpose;

3 (11) Where not within the jurisdiction of the public  
4 utilities commission, each county shall have the power  
5 to regulate by ordinance the operation of motor  
6 vehicle common carriers transporting passengers within  
7 the county and adopt and amend rules the county deems  
8 necessary for the public convenience and necessity;

9 (12) Each county shall have the power to enact and enforce  
10 ordinances necessary to prevent or summarily remove  
11 public nuisances and to compel the clearing or removal  
12 of any public nuisance, refuse, and uncultivated  
13 undergrowth from streets, sidewalks, public places,  
14 and unoccupied lots. In connection with these powers,  
15 each county may impose and enforce liens upon the  
16 property for the cost to the county of removing and  
17 completing the necessary work where the property  
18 owners fail, after reasonable notice, to comply with  
19 the ordinances. The authority provided by this  
20 paragraph shall not be self-executing, but shall  
21 become fully effective within a county only upon the



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1 enactment or adoption by the county of appropriate and  
2 particular laws, ordinances, or rules defining "public  
3 nuisances" with respect to each county's respective  
4 circumstances. The counties shall provide the  
5 property owner with the opportunity to contest the  
6 summary action and to recover the owner's property;

7 (13) Each county shall have the power to enact ordinances  
8 deemed necessary to protect health, life, and  
9 property, and to preserve the order and security of  
10 the county and its inhabitants on any subject or  
11 matter not inconsistent with, or tending to defeat,  
12 the intent of any state statute where the statute does  
13 not disclose an express or implied intent that the  
14 statute shall be exclusive or uniform throughout the  
15 State;

16 (14) Each county shall have the power to:

17 (A) Make and enforce within the limits of the county  
18 all necessary ordinances covering all:

19 (i) Local police matters;

20 (ii) Matters of sanitation;

21 (iii) Matters of inspection of buildings;



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- 1 (iv) Matters of condemnation of unsafe
- 2 structures, plumbing, sewers, dairies, milk,
- 3 fish, and morgues; and
- 4 (v) Matters of the collection and disposition of
- 5 rubbish and garbage;
- 6 (B) Provide exemptions for homeless facilities and
- 7 any other program for the homeless authorized by
- 8 part XVII of chapter 346, for all matters under
- 9 this paragraph;
- 10 (C) Appoint county physicians and sanitary and other
- 11 inspectors as necessary to carry into effect
- 12 ordinances made under this paragraph, who shall
- 13 have the same power as given by law to agents of
- 14 the department of health, subject only to
- 15 limitations placed on them by the terms and
- 16 conditions of their appointments; and
- 17 (D) Fix a penalty for the violation of any ordinance,
- 18 which penalty may be a misdemeanor, petty
- 19 misdemeanor, or violation as defined by general
- 20 law;



1           (15) Each county shall have the power to provide public  
2                           pounds; to regulate the impounding of stray animals  
3                           and fowl, and their disposition; and to provide for  
4                           the appointment, powers, duties, and fees of animal  
5                           control officers;

6           (16) Each county shall have the power to purchase and  
7                           otherwise acquire, lease, and hold real and personal  
8                           property within the defined boundaries of the county  
9                           and to dispose of the real and personal property as  
10                          the interests of the inhabitants of the county may  
11                          require, except that:

12                       (A) Any property held for school purposes may not be  
13                                       disposed of without the consent of the  
14                                       superintendent of education;

15                       (B) No property bordering the ocean shall be sold or  
16                                       otherwise disposed of; and

17                       (C) All proceeds from the sale of park lands shall be  
18                                       expended only for the acquisition of property for  
19                                       park or recreational purposes;

20           (17) Each county shall have the power to provide by charter  
21                           for the prosecution of all offenses and to prosecute



1 for offenses against the laws of the State under the  
2 authority of the attorney general of the State;

3 (18) Each county shall have the power to make  
4 appropriations in amounts deemed appropriate from any  
5 moneys in the treasury, for the purpose of:

- 6 (A) Community promotion and public celebrations;
- 7 (B) The entertainment of distinguished persons as may  
8 from time to time visit the county;
- 9 (C) The entertainment of other distinguished persons,  
10 as well as, public officials when deemed to be in  
11 the best interest of the community; and
- 12 (D) The rendering of civic tribute to individuals  
13 who, by virtue of their accomplishments and  
14 community service, merit civic commendations,  
15 recognition, or remembrance;

16 (19) Each county shall have the power to:

- 17 (A) Construct, purchase, take on lease, lease,  
18 sublease, or in any other manner acquire, manage,  
19 maintain, or dispose of buildings for county  
20 purposes, sewers, sewer systems, pumping  
21 stations, waterworks, including reservoirs,



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1 wells, pipelines, and other conduits for  
2 distributing water to the public, lighting  
3 plants, and apparatus and appliances for lighting  
4 streets and public buildings, and manage,  
5 regulate, and control the same;

6 (B) Regulate and control the location and quality of  
7 all appliances necessary to the furnishing of  
8 water, heat, light, power, telephone, and  
9 telecommunications service to the county;

10 (C) Acquire, regulate, and control any and all  
11 appliances for the sprinkling and cleaning of the  
12 streets and the public ways, and for flushing the  
13 sewers; and

14 (D) Open, close, construct, or maintain county  
15 highways or charge toll on county highways;  
16 provided that all revenues received from a toll  
17 charge shall be used for the construction or  
18 maintenance of county highways;

19 (20) Each county shall have the power to regulate the  
20 renting, subletting, and rental conditions of property  
21 for places of abode by ordinance;



1 (21) Unless otherwise provided by law, each county shall  
2 have the power to establish by ordinance the order of  
3 succession of county officials in the event of a  
4 military or civil disaster;

5 (22) Each county shall have the power to sue and be sued in  
6 its corporate name;

7 (23) Each county shall have the power to:

8 (A) Establish and maintain waterworks and sewer  
9 works;

10 (B) Implement a sewer monitoring program that  
11 includes the inspection of sewer laterals that  
12 connect to county sewers, when those laterals are  
13 located on public or private property, after  
14 providing a property owner not less than ten  
15 calendar days' written notice, to detect leaks  
16 from laterals, infiltration, and inflow, any  
17 other law to the contrary notwithstanding;

18 (C) Compel an owner of private property upon which is  
19 located any sewer lateral that connects to a  
20 county sewer to inspect that lateral for leaks,



- 1           infiltration, and inflow and to perform repairs
- 2           as necessary;
- 3           (D) Collect rates for water supplied to consumers and
- 4           for the use of sewers;
- 5           (E) Install water meters whenever deemed expedient;
- 6           provided that owners of premises having vested
- 7           water rights under existing laws appurtenant to
- 8           the premises shall not be charged for the
- 9           installation or use of the water meters on the
- 10          premises; and
- 11          (F) Take over from the State existing waterworks
- 12          systems, including water rights, pipelines, and
- 13          other appurtenances belonging thereto, and sewer
- 14          systems, and to enlarge, develop, and improve the
- 15          same;
- 16          (G) For purposes of subparagraphs (B) and (C):
- 17           (i) "Infiltration" means groundwater, rainwater,
- 18           and saltwater that enters the county sewer
- 19           system through cracked, broken, or defective
- 20           sewer laterals; and



1                   (ii) "Inflow" means non-sewage entering the  
2                                   county sewer system via inappropriate or  
3                                   illegal connections;

4           (24) (A) Each county may impose civil fines, in addition  
5                   to criminal penalties, for any violation of  
6                   county ordinances or rules after reasonable  
7                   notice and requests to correct or cease the  
8                   violation have been made upon the violator. Any  
9                   administratively imposed civil fine shall not be  
10                  collected until after an opportunity for a  
11                  hearing under chapter 91. Any appeal shall be  
12                  filed within thirty days from the date of the  
13                  final written decision. These proceedings shall  
14                  not be a prerequisite for any civil fine or  
15                  injunctive relief ordered by the circuit court;

16           (B) Each county by ordinance may provide for the  
17                  addition of any unpaid civil fines, ordered by  
18                  any court of competent jurisdiction, to any  
19                  taxes, fees, or charges, with the exception of  
20                  fees or charges for water for residential use and  
21                  sewer charges, collected by the county. Each



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1 county by ordinance may also provide for the  
2 addition of any unpaid administratively imposed  
3 civil fines, which remain due after all judicial  
4 review rights under section 91-14 are exhausted,  
5 to any taxes, fees, or charges, with the  
6 exception of water for residential use and sewer  
7 charges, collected by the county. The ordinance  
8 shall specify the administrative procedures for  
9 the addition of the unpaid civil fines to the  
10 eligible taxes, fees, or charges and may require  
11 hearings or other proceedings. After addition of  
12 the unpaid civil fines to the taxes, fees, or  
13 charges, the unpaid civil fines shall not become  
14 a part of any taxes, fees, or charges. The  
15 county by ordinance may condition the issuance or  
16 renewal of a license, approval, or permit for  
17 which a fee or charge is assessed, except for  
18 water for residential use and sewer charges, on  
19 payment of the unpaid civil fines. Upon  
20 recordation of a notice of unpaid civil fines in  
21 the bureau of conveyances, the amount of the



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1 civil fines, including any increase in the amount  
2 of the fine which the county may assess, shall  
3 constitute a lien upon all real property or  
4 rights to real property belonging to any person  
5 liable for the unpaid civil fines. The lien in  
6 favor of the county shall be subordinate to any  
7 lien in favor of any person recorded or  
8 registered prior to the recordation of the notice  
9 of unpaid civil fines and senior to any lien  
10 recorded or registered after the recordation of  
11 the notice. The lien shall continue until the  
12 unpaid civil fines are paid in full or until a  
13 certificate of release or partial release of the  
14 lien, prepared by the county at the owner's  
15 expense, is recorded. The notice of unpaid civil  
16 fines shall state the amount of the fine as of  
17 the date of the notice and maximum permissible  
18 daily increase of the fine. The county shall not  
19 be required to include a social security number,  
20 state general excise taxpayer identification  
21 number, or federal employer identification number



1 on the notice. Recordation of the notice in the  
2 bureau of conveyances shall be deemed, at such  
3 time, for all purposes and without any further  
4 action, to procure a lien on land registered in  
5 land court under chapter 501. After the unpaid  
6 civil fines are added to the taxes, fees, or  
7 charges as specified by county ordinance, the  
8 unpaid civil fines shall be deemed immediately  
9 due, owing, and delinquent and may be collected  
10 in any lawful manner. The procedure for  
11 collection of unpaid civil fines authorized in  
12 this paragraph shall be in addition to any other  
13 procedures for collection available to the State  
14 and county by law or rules of the courts;

15 (C) Each county may impose civil fines upon any  
16 person who places graffiti on any real or  
17 personal property owned, managed, or maintained  
18 by the county. The fine may be up to \$1,000 or  
19 may be equal to the actual cost of having the  
20 damaged property repaired or replaced. The  
21 parent or guardian having custody of a minor who





1 places graffiti on any real or personal property  
2 owned, managed, or maintained by the county shall  
3 be jointly and severally liable with the minor  
4 for any civil fines imposed hereunder. Any such  
5 fine may be administratively imposed after an  
6 opportunity for a hearing under chapter 91, but  
7 such a proceeding shall not be a prerequisite for  
8 any civil fine ordered by any court. As used in  
9 this subparagraph, "graffiti" means any  
10 unauthorized drawing, inscription, figure, or  
11 mark of any type intentionally created by paint,  
12 ink, chalk, dye, or similar substances;

13 (D) At the completion of an appeal in which the  
14 county's enforcement action is affirmed and upon  
15 correction of the violation if requested by the  
16 violator, the case shall be reviewed by the  
17 county agency that imposed the civil fines to  
18 determine the appropriateness of the amount of  
19 the civil fines that accrued while the appeal  
20 proceedings were pending. In its review of the



1 amount of the accrued fines, the county agency  
2 may consider:

3 (i) The nature and egregiousness of the  
4 violation;

5 (ii) The duration of the violation;

6 (iii) The number of recurring and other similar  
7 violations;

8 (iv) Any effort taken by the violator to correct  
9 the violation;

10 (v) The degree of involvement in causing or  
11 continuing the violation;

12 (vi) Reasons for any delay in the completion of  
13 the appeal; and

14 (vii) Other extenuating circumstances.

15 The civil fine that is imposed by administrative  
16 order after this review is completed and the  
17 violation is corrected shall be subject to  
18 judicial review, notwithstanding any provisions  
19 for administrative review in county charters;

20 (E) After completion of a review of the amount of  
21 accrued civil fine by the county agency that



1           imposed the fine, the amount of the civil fine  
2           determined appropriate, including both the  
3           initial civil fine and any accrued daily civil  
4           fine, shall immediately become due and  
5           collectible following reasonable notice to the  
6           violator. If no review of the accrued civil fine  
7           is requested, the amount of the civil fine, not  
8           to exceed the total accrual of civil fine prior  
9           to correcting the violation, shall immediately  
10          become due and collectible following reasonable  
11          notice to the violator, at the completion of all  
12          appeal proceedings; and

13          (F) If no county agency exists to conduct appeal  
14          proceedings for a particular civil fine action  
15          taken by the county, then one shall be  
16          established by ordinance before the county shall  
17          impose the civil fine;

18          (25) Any law to the contrary notwithstanding, any county  
19          mayor, by executive order, may exempt donors, provider  
20          agencies, homeless facilities, and any other program  
21          for the homeless under part XVII of chapter 346 from



1 real property taxes, water and sewer development fees,  
2 rates collected for water supplied to consumers and  
3 for use of sewers, and any other county taxes,  
4 charges, or fees; provided that any county may enact  
5 ordinances to regulate and grant the exemptions  
6 granted by this paragraph;

7 (26) Any county may establish a captive insurance company  
8 pursuant to article 19, chapter 431; ~~and~~

9 (27) Each county shall have the power to enact and enforce  
10 ordinances regulating towing operations[-]; and

11 (28) Notwithstanding any other law to the contrary, any  
12 county may adopt an ordinance regulating the operation  
13 of hosting platforms that provide booking services for  
14 transient accommodation operators conducting business  
15 within the county.

16 For purposes of this paragraph:

17 "Booking service" means any reservation or  
18 payment service provided by a person who facilitates a  
19 transient accommodations transaction between a  
20 prospective transient user and a host.



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1                   "Hosting platform" means a person who  
2                   participates in the transient accommodations business  
3                   by collecting or receiving a fee, directly or  
4                   indirectly through an agent or intermediary, for  
5                   conducting a booking service transaction using any  
6                   medium of facilitation."

7           SECTION 3. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9           SECTION 4. This Act shall take effect upon its approval.

10

INTRODUCED BY: 



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**Report Title:**

Transient Accommodations; Booking Services; Hosting Platforms;  
County Regulation

**Description:**

Authorizes the counties to adopt an ordinance regulating the operation of hosting platforms that provide booking services for transient accommodation operators.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

