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Neil Abercrombie
Governor

Mike McCartney
President and Chief Executive Officer

**Testimony of
Mike McCartney
President and Chief Executive Officer
Hawai'i Tourism Authority
On
H.B. 955
Relating to Transient Accommodations Tax
House Committee on Tourism
Monday, February 11, 2013
9:30 a.m.
Conference Room 312**

The Hawai'i Tourism Authority (HTA) supports H.B. 955, which proposes to impose a civil penalty of \$1,000, for willfully failing to provide information required by law relating to the local contact for a transient accommodations by an owner residing outside the State or on another island from the location of the transient accommodation.

Act 326, Session Laws of Hawaii 2012, was intended to address the problem of enforcement of the transient accommodations tax law, where individual properties are rented out by individual owners. This is particularly difficult if the property owner and the renters are nonresidents. It is especially difficult when payment occurs outside the state.

The penalties imposed by section 231-35, which Act 326 imposes are criminal penalties and include one or a any combination of:

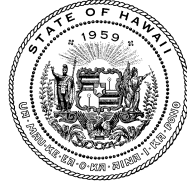
- A fine of not more than \$25,000;
- Imprisonment of not more than one year; or
- Probation.

The imposition of a \$1,000 civil penalty is more appropriate and may be sufficient to bring the operators of such transient accommodations into compliance.

Mahalo for the opportunity to offer these comments.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



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FREDERICK D. PABLO
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JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Tom Brower, Chair
and Members of the House Committee on Tourism

Date: Monday, February 11, 2013
Time: 9:30 A.M.
Place: Conference Room 312, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 955, Relating to Transient Accommodations Tax

The Department strongly supports H.B. 955, and offers the following information and comments for your consideration.

H.B. 955 amends Act 326, Session Laws of Hawaii (SLH) 2012, replacing the criminal penalty provisions with civil fines. Under current law, the penalty for failure to comply with Act 326 allows for criminal penalties, except for imprisonment and probation.

The Department is recommending modifying the penalty provisions of Act 326, SLH 2012, from a criminal penalty to a civil fine due to concerns raised last year regarding whether criminal penalties are needed to encourage compliance. Furthermore, the Department notes that the existing criminal penalty language in Act 326 creates an inconsistency with section 231-35, HRS. Therefore, the Department supports amendments to Act 326, as set for in H.B. 955.

The Department also suggests an additional amendment be made to further clarify the penalty provision of Act 326, SLH 2012. After each reference to the civil penalty of \$1,000 the following should be added:

"The penalty shall be imposed no more than once per year."

Thank you for the opportunity to provide testimony.

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

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SUBJECT: TRANSIENT ACCOMMODATION, Amend penalty provisions

BILL NUMBER: SB 1186; HB 955 (Identical)

INTRODUCED BY: SB by Kim by request; HB by Souki by request

BRIEF SUMMARY: Amends Act 326, SLH 2012, to provide that the failure to supply a local contact residing on the same island where the transient accommodation is located shall be subject to a civil penalty of \$1,000 rather than a criminal penalty.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: This is an administration measure submitted by the department of taxation TAX-04 (13). The landlord tenant code requires a landlord who lives out of state or on a different island to designate an agent who resides on the same island where a rental unit is located to act on the landlord's behalf. The landlord tenant code also states that while transient rentals on a day-to-day basis in a hotel or motel are exempt from this requirement, all other transient accommodation rentals are subject to the landlord tenant code.

The legislature by Act 326, SLH 2012, required an operator of a transient accommodation to designate a local contact residing on the same island where the transient accommodation is located. The act also provided that the failure to designate a local contact person is subject to the criminal penalties under HRS 231-35 provided that the violator shall not be subject to imprisonment or probation. HRS 231-35 also provides that the penalty shall be subject to a fine of \$25,000. The proposed measure replaces the penalties under HRS 231-35 and provides that the failure to provide such information shall be subject to a civil penalty of \$1,000 rather than a criminal penalty.

Digested 1/31/13



February 11, 2013

The Honorable Thomas Brower, Chair
House Committee on Tourism
State Capitol, Room 312
Honolulu, Hawaii 96813

RE: H.B. 955, Relating to Transient Accommodations

Aloha Chair Brower, Vice Chair Cachola, and Members of the Committee:

I am Dan Monck, here to testify on behalf of the Hawai'i Association of Vacation Rental Managers ("HAVRM").

HAVRM **submits comments** on H.B. 955 which seeks to limit the fines imposed upon an transient accommodations operator, while also holding the operator of a transient accommodation accountable for failure to report, under ACT 326, Session Laws of Hawaii 2012.

We would like to call the committee's attention to the advocated change included within H.B. 955 where the fine for an operator not reporting their Local Contact information to a homeowners or condominium association be reduced from its present \$25,000 to a civil penalty of \$1,000.

While we agree that the penalty should be a civil penalty as advocated by this proposed bill, the reduction of the penalty to \$1000 is too low and certainly inappropriate.

The operators of the Transient Accommodations that Act 326 addresses on average achieve revenues on the order of \$40,000 a year, and which can reach over \$100,000 a year. A fine of only \$1000 is too small, when compared to the magnitude of these revenues, to secure consumer protection and public safety by insuring a Local Contact exists for each Transient Accommodation, and that this information is properly provided to the appropriate AOAO. Furthermore, this Local Contact information provides the Department of Finance an important avenue to pursue significant tax collection for our State.

We would suggest that the fine be a civil fine of \$10,000. This fine is consistent with the value of the fine within H.B. 1706 of last year's session addressing exactly this issue that was passed by Tourism committee as well as the 2012 House.

Mahalo for the opportunity to testify.



HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON TOURISM
Representative Tom Brower, Chair

2/11/12
Rm. 312, 9:30 AM

HB 955
Relating to Transient Accommodations Tax

Chair Brower and Members of this Committee, my name is Max Sword, here on behalf of Outrigger Hotels Hawaii in support of this bill.

This bill changes the penalties for any non-compliance to Act 326 from criminal to the more appropriate application of civil penalties.

We urge your favorable disposition of these bill and thank you for allowing me to testify.